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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

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8 DELPHI CORPORATION,

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10 Debtor.

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14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 June 29, 2006

19 10:16 a.m.

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

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1 MOTION to Approve Motion For Order Under 11 U.S.C. Section

2 363(b) And Fed. R. Bankr. P. 6004 Approving (I) Supplement To

3 UAW Special Attrition Program, And (II) IUE-CWA Special

4 Attrition Program filed by John Wm. Butler Jr. on behalf of
5 Delphi Corporation.

6

7 AGREED Protective Order signed on 1/12/2006 Governing
8 Production and Use of Confidential and Highly Confidential
9 Information in Connection with the Within Chapter 11 Cases,
10 Including Contested Matters and Adversary Proceeding.

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12 MOTION to Approve Motion For Order Under 11 U.S.C. Section
13 363(b) And Fed. R. Bankr. P. 6004 Approving (I) Supplement To
14 UAW Special Attrition Program, And (II) IUE-CWA Special
15 Attrition Program filed by John Wm. Butler Jr. on behalf of
16 Delphi Corporation.

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18 OBJECTION to Motion Preliminary Objection of The Ad Hoc Equity
19 Committee to the Debtors' Motion for Order Under U.S.C. Section
20 363(b) and Fed. R. Bankr. P. 6004 Approving (i) Supplement UAW
21 Special Attrition Program and (ii) IUE-CWA Special Attrition
22 Program (related document(s)[4269]) filed by Frank L. Eaton on
23 behalf of Appaloosa Management L.P., Wexford Capital LLC, Lampe
24 Conway & Co., LLC, Harbinger Capital Partners, LLC and Marathon
25 Asset Management LLC.

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1 RESPONSE Debtors' Omnibus Reply To Objections To Motion For
2 Order Under 11 U.S.C. Section 363(b) And Fed. R. Bankr. P. 6004
3 Approving (I) Supplement To UAW Special Attrition Program And
4 (II) IUE-CWA Special Attrition Program (related
5 document(s)[4343], [4378], [4379], [4369], [4390], [4381],
6 [4292]) filed by John Wm. Butler Jr. on behalf of Delphi
7 Corporation.

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24 Transcribed By: Esther Accardi

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2 P R O C E E D I N G S

3 THE COURT: Delphi Corporation.

4 MR. BUTLER: Your Honor, good morning. Jack Butler from

5 Skadden Arps Slater Meagher & Flom, LLP. I'm here with my

6 colleagues Kayalyn A. Marafioti and Al Hogan, for the matter
7 especially set for today's agenda. The first, Your Honor, is a
8 chambers conference under the fourth amended scheduling order,
9 docket number 4170. This is the first of three chambers
10 conferences that have been directed under that scheduling order
11 and those are to be held in-camera. So --

12 THE COURT: Well, is there -- I know you have Ms. Robbins
13 on the phone, too. Is there -- does everyone who is going to
14 participate at the conference also want to listen to the
15 attrition program matter. Because given the in-camera nature
16 of it, it might make sense to have that conference after the
17 hearing so that those who are in the audience, as they wouldn't
18 be involved in that in-camera conference, would leave and I
19 wouldn't have to squeeze you into a small conference room and
20 kick two-thirds of the people out of the courtroom. Does
21 anyone mind waiting to the conclusion of this hearing? I'm
22 assuming you all want to see what's going to happen at the
23 hearing.

24 MS. ROBBINS: Your Honor, this is Marianne Robbins. I
25 wonder if we have any idea how long the hearing will be?

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1 THE COURT: We could dial you back or give you a time.

2 MS. ROBBINS: Be present for it, but I have another
3 commitment late in the morning, so I just wondered if anyone
4 had any idea if this is likely to be two hours or three hours
5 or its going to be relatively short?

6 THE COURT: I don't think its going to be relatively
7 short. I guess there's a couple of hours.

8 MS. ROBBINS: Then, Your Honor, I would like the ability
9 to dial back in.

10 THE COURT: Okay. All right, so, should we then contact

11 your office when we're done?

12 MS. ROBBINS: That would be terrific if somebody could do
13 that.

14 THE COURT: Do we have your number?

15 MS. ROBBINS: 414-271-4500. If someone calls that number
16 and leaves a message for me, a receptionist will find me.

17 THE COURT: Okay. That's 271, you said?

18 MS. ROBBINS: 414-271-4500.

19 THE COURT: Okay. Very well, thank you.

20 MS. ROBBINS: Thank you very much, Your Honor.

21 THE COURT: Okay. All right. So, why don't we proceed
22 then with the UAW supplement and the IUE Attrition Program
23 motion?

24 MR. BUTLER: Your Honor, the only matter on the agenda
25 other than the chamber's conference is the debtors' motion for

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1 an order under Section 363(b) and under our Rule 6004, to
2 prove, as Your Honor pointed out, the supplement to the UAW
3 Special Attrition Program and the IUE-CWA Special Attrition
4 Program which has now been collectively bargained, that motion
5 is at docket number 4269.

6 Your Honor, the objections that have been filed are set
7 forth in the agenda circulated. There are objections all
8 styled, as limited. But there are objections that have been
9 filed by each of the statutory committees as well as by the
10 Appaloosa led self-styled ad hoc equity committee and the
11 Wilmington Trust. Your Honor, the papers in this matter are
12 pretty comprehensive, including both the objections, and are on
13 this reply. And I would propose, unless Your Honor wants to
14 hear from people, to simply move forward with the evidence.

15 THE COURT: No, that's fine.

16 MR. BUTLER: Your Honor, we have filed -- in terms of the
17 exhibit binders, there is a three set of exhibits. My
18 understanding, and counsel can correct me if I have this
19 incorrect, there are no objections to the admission of exhibits
20 1 through 13. Exhibits 14 through 27 are to be admitted not
21 for the truth of the matter asserted. Exhibits 28 through 32
22 are not objected. Exhibits 39 through 43 are not objected to.
23 And Exhibits 45 through 55 are not objected to. In lieu of the
24 admission of Exhibit Number 56, my understanding is we're
25 stipulating to the fact -- the debtors' are, that the high

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1 yield weekly report for the period June 22nd, reports that the
2 bid price for -- 2006 notes, the notes 6.55 percent notes,
3 through 2006, the bid price on that June 22nd, as reported in
4 that publication, was 82.750. Is that correct? Do I have it
5 right?

6 MR. FOX: Yes, you did.

7 MR. BUTLER: So that stipulation into the evidentiary
8 record is in lieu of Exhibit 56. With respect to Exhibit 44,
9 my understanding is the parties are trying to work on
10 clarifying some designations under -- about Mr. Sheehan's
11 transcript. So I should be able to report on that prior to the
12 conclusion of the evidentiary record. Which leaves, I believe,
13 the only outstanding objections by any party, to be that of
14 Wilmington Trust's two documents, 33 through 38? 33, they
15 raise an authentication question. And with respect to all of
16 the exhibits, 33 through 38, they raise a relevance objection.

17 MR. FOX: Excuse me. We also object to 42. And with
18 respect to the designations on 43 which we received as of 3:15
19 this morning, we did not have a chance to review them. So
20 until we determine that it is relevant, I just ask that the

21 entire transcript be put in the record.

22 MR. BUTLER: We have no objection to the entire transcript
23 going in, Your Honor. So those are -- as I understand, Your
24 Honor, the only objections. So I don't even want to hear the
25 argument on the particular objections and just move the

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1 admissions of ones that are not objected to and leave the
2 others for later.

3 THE COURT: Well, are you going to raise them later, or do
4 you just want them in the record to have them in the record?

5 MR. BUTLER: Well, I think we want -- we want all of this
6 to go into the record, Your Honor. The --

7 THE COURT: No, but what I'm saying is are you going to
8 refer to them later. In which case, I could deal with the
9 objections in context or are they just basically, sort of,
10 supplemental to your main --

11 MR. BUTLER: Well, they're supplemental, Your Honor. I
12 don't intend to -- when we get into closing arguments, I mean,
13 I'll have something to say about those exhibits. I don't
14 intend, and depending upon how you deal with the motion to
15 quash, we may have something to say with respect to the
16 Wilmington witness, with respect to these matters. As Your
17 Honor knows, the Wilmington Trust has also filed the motion to
18 quash the trial subpoena last evening with respect to the
19 witness who had been subpoenaed to appear today. And we have
20 filed our reply to that which is another matter we should
21 probably deal with. And that would certainly bear -- although,
22 not entirely, that would bear in somewhat on the use of
23 Exhibit's 31 through 38 and Exhibit 42. Although, we think
24 they would be relevant even if the testimony was not deemed
25 necessary for this hearing. And we're prepared to argue that

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1 issue as well, Your Honor, as a pre-trial matter if you want us
2 to do so.
3 (Debtor's Exhibit 1 through 13 was hereby received into
4 evidence, as of this date.)
5 (Debtor's Exhibit 14 through 27 was hereby received into
6 evidence, as of this date.)
7 (Debtor's Exhibit 28 through 32 was hereby received into
8 evidence, as of this date.)
9 (Debtor's Exhibit 39 through 43 was hereby received into
10 evidence, as of this date.)

11 THE COURT: Well, all right. Why don't we do that?

12 MR. BUTLER: So, Mr. Fox's motion, so --

13 MR. FOX: Thank you, Your Honor. Edward Fox with
14 Kirkpartrick & Lockhart Nicholson Graham, on behalf of
15 Wilmington Trust Company's indentured trustee. Your Honor, we
16 did file the motion yesterday because we -- Your Honor was not
17 in a position to give us a hearing -- to hear this until this
18 morning. I had really felt no choice but to ask Mr. Similari
19 to come back from Wilmington to New York. And he is her in the
20 courtroom today, so I think that obviates a lot of it. But
21 I -- the debtors succeeded in wasting Mr. Similari's time. I
22 think the question now is whether and how much of the Court's
23 time gets wasted over this exercise. The debtor indicates in
24 footnote 8, on page 11 of its reply, referring to the
25 deposition of Mr. Similari of Wilmington Trust that was taken

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1 yesterday, that "he could not offer a single factual basis in

2 support of its objection, relying instead solely upon the legal
3 argument constructed by Wilmington Trust counsel." If that's
4 the case, for the life of me, I don't understand --

5 THE COURT: Well, do you agree with that?

6 MR. FOX: We're not offering -- our view is that the
7 debtors have not proven their case.

8 THE COURT: No, but I'm just asking. I mean, you don't
9 intend to offer his testimony, in any way, for any factual
10 support for the benefit or detriment to Delphi Corporation of
11 this matter.

12 MR. FOX: No. All of our knowledge is from what the
13 debtors have said either in discovery or in the papers.

14 THE COURT: Okay. I think based on that, I don't really
15 see why he needs to testify. It's stipulated.

16 MR. BUTLER: Your Honor, if we can stipulate to the
17 transcript, going in -- here's the issue. Wilmington Trust
18 has, and Your Honor called it out, we addressed it in
19 paragraph's 11 of our reply as well as 64 through 66 of our
20 reply. Wilmington Trust has consistently, in these cases,
21 filed objections with a common theme that Delphi Corporation
22 should not bear the costs of the debtors' labor force
23 restructuring. That's been their position. And when they lose
24 on those objections, as they did with respect to the first
25 attrition motion, they appeal this Court's decision to a higher

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1 court.

2 What the debtors' want, because we presume that if Your
3 Honor rules for the debtors today, Wilmington Trust will again
4 take this to the district court. We want to have a complete
5 record. And that record includes the fact that Wilmington
6 Trust is not acting at the direction of any bond holder. And

7 that Wilmington Trust, in fashioning these arguments, about the
8 fact that Delphi Corporation has no liability. The person
9 responsible at Wilmington Trust for managing this indenture,
10 hasn't even examined the basic documents in Wilmington Trust
11 possession that would belie that position. And the fact is,
12 this is an argument where, you know, Delphi Corporation is the
13 employer, Delphi Corporation signed all the documents.
14 Wilmington Trust wants to come in here every hearing and say
15 Delphi Corporation has no liability here. And so -- there's
16 got to be a client here, Your Honor. Mr. Fox has to have a
17 client. And that client, when put to the test, that client
18 hasn't even examined, by his own admission, the offering
19 memoranda and other documents in their possession as to what
20 the circumstances were, when Wilmington -- you know, when
21 Wilmington's represented bond holders invested in this company.
22 And, Your Honor, if Mr. Fox is intent on taking you up to
23 the district court, we want to have the record to be complete.
24 That's our issue. I mean, I was perfectly content with what we
25 did -- what Your Honor ordered at the last hearing, in what we

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1 described on pages 64 to 66, in what Your Honor suggested the
2 parties do with the New Brunswick hearing. Which was put the
3 language in the proposed order, which is in here, which says, I
4 quote it at page 66 "nothing in this motion" -- paragraph 66,
5 "nothing in this motion, the supplement, the IUE-CWA Special
6 Attrition Program" --
7 THE COURT: No, but that's a separate point. I understand
8 you have the reservation of rights. Well -- so, in addition,
9 in trying to establish that there's no factual underpinning as
10 to the economic effects of this request of relief on Delphi
11 Corporation, you want to establish what? The -- I'm not

12 sympathetic about the direction of the client. The client is
13 Wilmington Trust, so obviously they authorized this. As far as
14 familiarity with underlying documents, you're saying that the
15 indentures, themselves, are relevant on that?

16 MR. BUTLER: The indentures, the offering memoranda --
17 I mean, the point we're trying to simply make is that
18 Wilmington Trust is coming here attacking our business
19 judgment. Saying we couldn't possibly have exercised
20 reasonable business judgment because there's no benefit to
21 Delphi Corporation. And yet, they have undertaken no analysis
22 of that at all on their perspectives to have a contrary point
23 of view. Usually when you come in and you have a perspective,
24 there's a counter perspective. And all I'm saying, Your Honor,
25 is they have no factual counter perspective at all with respect

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1 to their issues. Not even an admission that these bonds
2 invested, subject to the liabilities. Which happens to be the
3 fact?

4 THE COURT: Well, they take issue with what the
5 liabilities are. But, I -- look as far as the relevance
6 objection, I don't really have a problem with the documents.
7 And I'm not sure that they're particularly persuasive to me, in
8 any event. But I looked at the documents just to see what they
9 were and they go to the -- they're the indentures and the
10 offering memorandum, I don't have a problem with admitting
11 those. As far as his deposition is concerned, I don't know
12 what else is in the deposition besides what Mr. Fox has already
13 stipulated to. And -- so do you have a problem with the
14 deposition?

15 MR. FOX: Well, I think, Your Honor, if you can review the
16 deposition for what its worth, I don't think it's going to add

17 anything.

18 THE COURT: All right. So I'll admit it.

19 MR. FOX: And that's it's in lieu of Mr. Similari's
20 testifying.

21 THE COURT: Okay.

22 MR. FOX: That's fine, Your Honor. With respect to the
23 other documents we just argued about, what if any --

24 THE COURT: Right. You can argue as to the weight of
25 them.

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1 MR. FOX: Right is what is divulged.

2 THE COURT: Okay.

3 MR. BUTLER: Thank you, Your Honor.

4 MR. FOX: Thank you.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, I believe that means all the
7 documents are now in, other than Exhibit 56, which we have the
8 stipulation for in lieu of the exhibit and Exhibit 44, which
9 we're working with the committee counsel on, which we'll report
10 back to Your Honor by the end of the hearing.

11 THE COURT: Okay.

12 MR. FOX: Your Honor, just so the record's clear with the
13 entire Similari --

14 THE COURT: Yes.

15 MR. FOX: -- transcript will be in the record.

16 THE COURT: Not just those designations but the whole
17 thing.

18 MR. FOX: Thank you.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, as has been our custom, we have,
21 and they have now been admitted into evidence, declarations in

22 support of the motion. The first declaration, at Exhibit 28,
23 which has been admitted, the declaration of Kevin Butler, we
24 would call Mr. Butler for any cross examination in connection
25 with that declaration.

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1 THE COURT: Okay. Does anyone want to cross examine Mr.
2 Butler? I don't have any questions for him either. I think
3 the issues really go to -- the issues raised in the objections,
4 I think, to the extent they were addressed, were addressed by
5 the evidence.

6 MR. BUTLER: Then the next witness we would offer Your
7 Honor is the declaration of Mr. Sheehan, in connection with his
8 declaration which has been admitted at Exhibit Number 30.

9 THE COURT: Okay. Does anyone want to cross examine Mr.
10 Sheehan?

11 MR. SEIDER: Yes, Your Honor, if I might?

12 THE COURT: Okay.

13 (The Witness is Sworn)

14 THE COURT: Just for the record, can you just spell your
15 name?

16 THE WITNESS: John, J-O-H-N, Sheehan, S-H-E-E-H-A-N.

17 MR. SEIDER: And for the record, Mitchell Seider of Latham
18 & Watkins for the official committee of unsecured creditors.

19 CROSS EXAMINATION BY

20 MR. SEIDER:

21 Q. Good morning, Mr. Sheehan.

22 A. Mr. Seider.

23 Q. Mr. Sheehan, you're familiar with the programs that are
24 before Judge Drain, today?

25 A. Yes, I am.

1 Q. Under those programs, if they are approved, Mr. Sheehan,
2 will Delphi receive a release on its OPEB liability to those
3 employees who check the box?

4 A. It will not be. I don't believe that's the case in
5 that -- as the employees check the box, they will retire as
6 General Motor's employees. And, I believe, that we will be
7 released from the primary obligation to pay for the OPEB -- to
8 pay for the medical costs of those individuals post their
9 retirement. I believe that there may be other avenues in which
10 General Motors would seek recovery. But, yes, Delphi is
11 relieved of the obligation for the OPEB.

12 Q. Relieved because General Motors will pay it, but not
13 released because it's being formally excuse from the obligation
14 under all circumstances?

15 A. I think that's correct.

16 MR. SEIDER: Pass the witness, Your Honor.

17 THE COURT: Okay. Does anyone else have any questions for
18 Mr. Sheehan? I have one. This was raised in the unsecured
19 creditors' committee's limited objection. And I think it's
20 clear, but I just want to make sure it's clear. You recall
21 that the debtors have previously entered into, and the Court
22 has previously approved, a special attrition program with the
23 UAW and GM?

24 THE WITNESS: Yes, sir.

25 THE COURT: To the extent there are any inconsistencies,

1 and I'm not sure there will be, but to the extent there are any
2 inconsistencies between the relief you're seeking today, in
3 this motion, regarding the UAW and that last motion, the relief

4 you're seeking today, has no bearing on the last motion,
5 correct? You're not modifying the last motion, or the last
6 order?

7 THE WITNESS: No, I don't believe that's the case, sir.

8 THE COURT: Okay. You can step down.

9 MR. BUTLER: Can I have a moment, Your Honor?

10 MR. SEIDER: Your Honor, I see Mr. Sheehan talking with
11 his counsel --

12 THE COURT: Well, he's not going to testify again.

13 MR. SEIDER: Okay. My apologies, Your Honor. I wasn't
14 sure that you were done. You were, thank you.

15 MR. BUTLER: Your Honor, our final witness here that we
16 have with respect to the declarations is that of Mr. Resnick
17 which is Exhibit Number 29, which has been admitted. We
18 present Mr. Resnick for any cross examination.

19 THE COURT: Okay. Does anyone wish to cross examine Mr.
20 Resnick? Well, the objections raise an issue with regard to,
21 at least in my mind, problematically, how the debtors went
22 about evaluating the provisions of the agreement that provide
23 that GM will have an allowed claim for the 50 percent of the
24 buy-out that it's funding. And also the debtors' evaluation of
25 the provision that permits GM to assert, under the Master

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1 Separation Agreement, the claim for taking on the IUE
2 liabilities in light of the apparent absence of a formal
3 indemnification agreement specifically addressing those
4 liabilities. Are you reserving Mr. Resnick or someone else in
5 rebuttal to that point.

6 MR. BUTLER: Your Honor, we actually believe that Mr.
7 Resnick's testimony addresses that question.

8 THE COURT: Okay.

9 MR. BUTLER: If Your Honor has questions, we can put Mr.
10 Resnick on the stand and walk through that. I mean, our papers
11 can walk through the --

12 THE COURT: Well, no -- I mean it's just -- it's just that
13 there's -- I may want to hear from him depending on what I hear
14 from the others, from the objectors about that analysis. So
15 you can reserve him for rebuttal and that may be worthwhile.
16 Because I have just some questions about how the parties
17 actually interpret, at least, one provision of this agreement.

18 MR. BUTLER: We'll be happy to do that, Your Honor.

19 THE COURT: Okay.

20 MR. BUTLER: So subject to the rebuttal case, Your Honor,
21 that would constitute the debtors' evidentiary record.

22 THE COURT: Okay.

23 MR. BUTLER: Does any of the other parties have any
24 evidence they want to offer?

25 MR. KESSLER: Your Honor, the committee does not have any

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1 direct evidence to offer.

2 THE COURT: Okay. All right.

3 MR. BUTLER: Does any of the objectors have anything to
4 offer to the record?

5 MR. KENNEDY: Other than the documents that have already
6 been put into evidence in the exhibit binders, no.

7 THE COURT: All right.

8 MR. KURTZ: The ad hoc committee of equity holders have no
9 evidence to offer.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, in support of our case, I'm going
12 to rely principally on the omnibus reply that we filed. I'm
13 not going to -- I know, Your Honor, reads these things. I'm

14 not going to repeat all the arguments in there. We're here
15 today on the IUE program, at this point in the case. Because
16 there were a series of events that led us not to be able to get
17 this done at the time that the UAW program was or a meeting
18 with them, thereafter. And when we were lined up to complete
19 it at the time we were finishing up for the summaries of the
20 1113 and 1114 cases, as you know, Mr. Reichert passed
21 tragically and that delayed everything. We are now in a
22 position to move forward on this. It involves somewhere in the
23 neighborhood of our hourly workers.

24 With respect to the debtors' transformation plans, it's
25 extremely important that we are able to get this second program

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1 approved and implemented. The vast majority, the super
2 majority of our hourly workers are represented either by the
3 UAW or the IUE-CWA. And as I believe has been publicly
4 reported, the IUE attrition program to date, has a take rate
5 subject to people being able to revoke their elections of some
6 12,699 individuals having voluntarily elected an option under
7 that program to take away somewhere north of around 87 percent,
8 involves a total population of 21,737 members of the UAW who
9 work at Delphi. Leaving about 8,600 employees to be addressed
10 in, at least, one element of our labor transformation.

11 As Your Honor recalls, there are really three things that
12 we need to be able to do in our labor transformation. We need
13 to account for the work force that's here and determine whether
14 they will, as an individual, be transformed. Or whether they
15 will elect options to leave the systems and be replaced by
16 other workers to the extent we need additional workers.
17 Whether we need to replace those workers at a different
18 economic level, in terms of the economic compensation paid to

19 them. We have, also, the need to bring the economics,
20 generally, in line with competitive realities faced by Delphi
21 Corporation out in the global economy inherent in the United
22 States. And third, we need to be able to resolve our -- the
23 other provisions of our collective bargaining agreements that
24 are also non-competitive, but are not necessarily relating to
25 the base wage or to the number workers that we have. But we

26

1 also have to address, and that includes, making sure those
2 agreements are competitive in the new reality of our footprint
3 going forward.

4 The UAW program, to date, clearly has addressed in an
5 important measure, but certainly not in a complete measure, how
6 to deal with the first element of those three items. And the
7 additional program here today, for the UAW, the expansion of
8 the pre-retirement program to include the 26th year as an
9 additional option, we were very mindful, this is not an
10 amendment to the prior program. It does not change anything in
11 the prior order. This is an additional option that would be
12 approved under this program. And also, the buyout
13 arrangements, which would allow us to have people take a buyout
14 and waive their claims with respect any other invested pension,
15 is an important element addressing the remainder of the 8,600
16 or so employees of the UAW that we believe need an expanded
17 menu of options to make as many of individual judgments as are
18 possible, before we get involved in the issue of mandatory
19 transformation, which is an issue we're going to need to
20 address at some point in this reorganization. And, in
21 addition, obviously, flow backs in dealing with sales and wind
22 down and the residual population are important elements. But
23 the debtors' believe that it's extremely important as a labor

24 matter to be able to address these buyout issues and continue
25 to create opportunities for the residual population of the

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1 21,737, those remaining here, to be able to elect a
2 voluntarily -- options that would be appropriate to them.
3 That motivation, the motivation number 1, of moving
4 forward with the UAW, and we'll address that more in chamber's
5 conference later. And second, of dealing with our second
6 largest union, the IUE-CWA, and allowing them to, sort of,
7 catch up. Because they are now a month or two behind where we
8 thought they should be, in parallel with the UAW, is extremely
9 important to the reorganization towards the timetable that has
10 been laid out towards trying to make substantial progress prior
11 to coming back here on August 11th to resume, if necessary, the
12 Section 1113, 1114 case. And there is a significant amount of
13 concern in our employee population about the unavailability of
14 these options. And we'll address what the implications are for
15 the USW and for the splinter unions in the chambers conference
16 and what the progress is in those areas.

17 And so looking first at the UAW supplement, and these two
18 additional options. I don't think that at the end of the day,
19 that anyone is disputing the pre-retirement option for the 26th
20 year, we fund it. GM is not involved in that. I don't think
21 that's a particular issue to anybody.

22 The other option is the buyout option. And, again, Mr.
23 Resnick is available to the Court to answer any questions the
24 Court has on this. But, the debtors concluded, that it was in
25 the debtors' business judgment to make these payments, either

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1 140 thousand or seventy thousand or forty thousand depending
2 upon classification and seniority of years of credit and
3 service. In order for people to give waivers to the estate and
4 walk away with everything other than divested pension, we think
5 that's important. There's a price tag with that.

6 How do the debtors finance that, was the question. The
7 debtors have, really, several options. The debtors could
8 borrow again their DIP to finance it. The debtors can use
9 liquidity they have in their post-petition estates to do it.
10 Or the debtors could try to find a more economic manner in
11 addressing those issues, than they otherwise would. And just
12 to make the point, had the debtors chosen to simply fund all
13 this, essentially as a post-petition claim or a post-petition
14 set of payments, these objections, obviously, fall away in that
15 circumstance. But it doesn't make particularly good business
16 judgment for the debtors to do that. That means using 125,
17 150, 200 million dollars, depending on your estimation of tape
18 rate of incremental liquidity of the estate. Now, both from a
19 cash perspective, and ultimately from an overall value
20 perspective and a funded thing entirely just as we did the pre-
21 retirement program. And what we're able to -- and by the way,
22 had we chosen to do that, all of the things that the objectors
23 are concerned about in terms of, so called, incidental benefits
24 to General Motors, because someone who retires and waives OPEB,
25 walks away with his OPEB, obviously, if the benefit guaranty's

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1 triggered some time in the future, those people won't be there
2 claiming against that guaranty. So there's some incidental
3 benefit that General Motor's doesn't mind. If we funded it all
4 entirely ourselves, same thing is true.

5 That makes the program no more objectionable, no less
6 objectionable from their perspective than it now, expect they
7 wouldn't object under those circumstances. What they object to
8 is that the debtors, in trying to approach this from the most
9 economic perspective, were able to get another entity to pay
10 half of this obligation. And not take, as Your Honor pointed
11 out in the earlier hearing, an administrative claim for that.
12 Most people who pay money to the estate, post-petition, get an
13 administrative claim. They chose not to. We were able to
14 negotiate with them an allowed pre-petition claim for that at
15 the Delphi Corporation level, for all the reasons we described.
16 The debtors believe that's the appropriate level for it to be
17 at, in connection with that. And, ultimately, that means they
18 take whatever the payment back -- they take in whatever
19 currency and whatever terms all the unsecured creditors do.
20 Which essentially means, from a stand point on an unsecured
21 creditor, we've been successful in taking a claim that what to
22 be senior and therefore dilutive of whatever the recovery is to
23 unsecured creditors. And we have made it pari passu with all
24 unsecured creditors.

25 Now, that doesn't help, I guess the equity holders.

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1 Because it comes, in every respect, ahead of the equity
2 holders. But, you know, the equity holders position in this
3 case has been, they're in the money. It's yet to be chosen.
4 But, if they're in the money, than the hundreds of dollars,
5 whether its paid as the unsecured creditors' payment or paid as
6 a DIP loan, really should be immaterial to them. What's
7 happened, instead, here, and that's the essence of this
8 evaluation, how should -- with respect to the UAW program, how
9 should the debtors most economically fund this program in the

10 best interest of the estate. And from a business judgment
11 perspective, the debtors believe -- and I think believe quite
12 strongly, that it has to be right from an economic analysis,
13 that a pre-petition unsecured claim is better than a post-
14 petition administrative claim. If you presume that you're
15 going to do the program under either circumstance. And
16 nobody's objecting to the program. The oddity of this is, that
17 everybody wants this transformation process to occur.
18 Everybody wants this to be transformed voluntarily, if its
19 possible. And everyone seems to recognize, no matter what
20 they're priority on the pre-petition capital structure, that
21 labor transformation is incremental to value here. That's
22 there's value that is going to either be maintained or created
23 by a successful labor transformation in this case. So, on that
24 level, I don't think the analysis is much more detailed than
25 that. Your Honor, could always deny the relief with respect to

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1 General Motors, on that particular issue. In which case, the
2 program gets implemented by us funding the entire amount from
3 the estate as a post-petition matter. That simply, to us, is
4 bad business. And we think that ought not be something that we
5 are required to do. And that claim, which is being created
6 from an entirely new accommodation, in our view, does not
7 effect, in any way, any of the other claims issues in this case
8 which have been preserved. This is a simple trade. What
9 compensation or consideration do you give for someone giving
10 you new money to pay a new program that makes imminent business
11 sense to implement and implement now.

12 With respect to the second issue, which is the check-the-
13 box issue. And the debtors recognize there's not a specific
14 indemnity agreement here. If Your Honor remembers, under the

15 last program there were three channels. The three channels
16 were the Master Separation Agreement, the separate -- so
17 called, Covenant Agreement, which was the indemnity related to
18 the benefit guaranty. And there was the Employee Matters
19 Agreement which deals with the fact that there was flow backs
20 to General Motors. There are no flow backs with the IUE, so
21 there's no employee matters agreement. There is no separate
22 indemnity agreement. There is the Master Separation Agreement.
23 That channel, one of the three channels, still exist here. The
24 words that surround the check-the-box arrangement here, with
25 one exception I'll talk about in a minute. The basic words and

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1 the preservation of rights are identical to what was approved
2 in the last program. The words are identical, the relief is
3 identical. Again, the arrangement is that General Motors can
4 assert a claim. When they assert the claim, everybody is free
5 to object to it. Not to be able to assert the claim, because
6 the check-the-box program, just like the last program, is a
7 new program. So it would be very difficult to argue, if you
8 didn't say, well, gee, you can't argue the check-the-box isn't
9 assertable under the program, you know, then everyone would
10 have it -- you know, it would be an out-of-box objection, just
11 like it was last time. We've created this check-the-box
12 arrangement, it wasn't contemplated by any of the pre-petition
13 documents, we acknowledge that, that was true in the last
14 program. The check-the-box is a new opportunity. We know, by
15 the way, it was an important opportunity. Well, Judge, all but
16 five, of the nearly 13,000 employees, who elected under the
17 attrition program with the UAW, checked the box. All but five
18 decided they would rather retire on GM's balance sheet than on
19 ours. And so the importance of that check-the-box program,

20 particularly to the IUE and CWA, which has no flow-backs, a no
21 flow-back rights or any other right to be able to move to GM,
22 the opportunity to retire on the GM balance sheet was extremely
23 important in order to be able to collectively bargain this
24 attrition program.

25 And so, what mechanics do we put in place. We told

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1 General Motors that we were not going to give them a new claim
2 for it. We told General Motors we were weren't going to let
3 them sign -- we set up a new document. General Motors, by the
4 way, without going into settlement discussions, in great
5 detail, General Motors wanted us to sign a separate financing
6 agreement for that obligation and create a new set of documents
7 under which they would be able to assert a claim. We said no.
8 We were not going to create a new conduit or new channel for
9 them to assert the claim. What we were prepared to do was look
10 to the only agreement, the pre-petition agreement, that was
11 arguable applicable to this type of arrangement, which was the
12 Master Separation Agreement. And they would need to run the
13 same obstacle course. For this, they're running under the
14 prior programs. And, Your Honor, all of the rights to claim
15 all the things that the committees and others may want to claim
16 at some point in time have been preserved. And the -- if
17 there's a claim down the line for any of those issues, without
18 trying to go through a laundry list of what they might be, the
19 fact is those claims have been specifically preserved. As to
20 the debtors, and this was the one exception, and this is
21 different from the UAW program.

22 The debtors agree that when it came time for that
23 objection process to occur, the debtors would limit their
24 objection to what the debtors view is the central issue in the

25 case surrounding OPEB. Which is what the economic value of

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1 what that claim is. So the debtors have said, we would limit
2 our objection to the economic valuation issue. We were not
3 prepared to accept -- and Your Honor's heard this in the equity
4 committee litigation, in the prior litigation on attrition
5 programs, in the 1113, 1114 litigation and elsewhere, the
6 principal issues raised by the stake holders, is that the value
7 in a claims allowance basis, the value of an OPEB claim in
8 claims administration, is different than the value of an OPEB
9 claim on a balance sheet in accordance with accounting
10 standards. That issue, the debtors have reserved fully for the
11 debtors to litigate. While anyone else wants to file an
12 objection, but we have reserved that right to ourselves to
13 continue to litigate. And we don't believe anyone else --
14 there needs to be a delegation of authority to others to
15 litigate. That's all, we think premature, as our papers say.
16 But we reserve that right. And, Your Honor, we believe that
17 that option, the option to assert a claim, not get a claim,
18 there's no allowance here, there's no agreement about OPEB
19 here, just the right to assert a claim subject to everybody's
20 ability to argue it, we believe preserves the same kind of
21 benefits as occurred previously.

22 THE COURT: Okay. Let me explore that for a second.
23 First of all, there's no flow back agreement between the IUE
24 and GM?

25 MR. BUTLER: Correct.

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1 THE COURT: There is a benefit guaranty?

2 MR. BUTLER: Correct.

3 THE COURT: What does GM's agreement in this aspect of the
4 IUE-CWA attrition program add, in the nature of a flow back, to
5 the benefit guaranty?

6 MR. BUTLER: I don't know that it adds -- the flow back
7 and the benefit guaranty are sort of two different concepts.
8 What this agreement does is allow people to now, if they want
9 to leave the system now, it allows them to retire now on the
10 balance sheet of General Motors. And it requires them, by the
11 way, to take, subject to whatever General Motors is paying
12 their retirees.

13 THE COURT: But my question -- I acknowledge it was
14 somewhat difficult to answer, because it was not well-phrased
15 is in the benefitsguaranty, the IUE employees would not be
16 able, simply to say, you have to pay my benefits now to GM,
17 right?

18 MR. BUTLER: Well neither can anybody -- let me go with
19 that. Let me walk through that, I think I understand the crux
20 of your question. Right now, as we sit here today, no employee
21 at Delphi can look to GM and say pay my benefits. The only way
22 that will ever happen is that either GM agrees voluntarily to
23 permit it to happen, which is what the check-the-box programs
24 are, all new. All new programs that have been created post-
25 petition. Or the benefit guaranty would have to be triggered

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1 under its terms. And that would occur, with respect to
2 presumably the 1113, 1114 process. Because General Motors has
3 taken the position, which is a colorable argument, that the
4 unions are estopped from voluntarily modifying anything that
5 Delphi that is subject to the guaranty because that would
6 viciate the guaranty. So, to the extent that the unions would

7 try to say, let's -- you and we, Delphi and unions, we agree to
8 collectively bargain something that would arguably cause there
9 to be a shortfall under some benefit, that could flow back
10 through the guaranty. General Motor's position is, not so fast
11 that would viciate the guaranty it won't be available.

12 THE COURT: Okay. Now those arguments in respect of the
13 benefit guaranty apply to the extent they're correct, they're
14 by equally to the UAW and the IUE, because they both have a
15 benefit guaranty.

16 MR. BUTLER: Correct. And the USW.

17 THE COURT: And the USW. Now, however, the UAW also has a
18 flow back agreement and the IUE doesn't.

19 MR. BUTLER: Correct.

20 THE COURT: Does the agreement of GM under this program,
21 involving the IUE, give the IUE the benefits of a -- and
22 consequently the debtors too--benefits of a flow back, separate
23 and apart from the benefit guaranty?

24 MR. BUTLER: No, Your Honor, not in my opinion. Flow
25 back, actually allows a -- would allow, for example, the UAW --

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1 a flow back from Delphi to General Motors from a supplier to a
2 OEM, actually would allow somebody to flow back and not have
3 their wages transformed. Right. They actually flow back and
4 they work.

5 THE COURT: This doesn't apply to that.

6 MR. BUTLER: No. Not at all.

7 THE COURT: So the absence of a flow back agreement is
8 really, is kind of irrelevant to this particular motion then?

9 MR. BUTLER: Other than -- I don't think it's irrelevant,
10 Your Honor. The absence of the ability to be able to address
11 the labor issues here, for the IUE not being able to flow their

12 -- some of their union members back to General Motors, which is
13 an option the UAW had.

14 THE COURT: Right.

15 MR. BUTLER: Okay. The lack of that optionality, if you
16 will, makes the issue of labor transformation to the IUE say
17 that, in their view, much more difficult.

18 THE COURT: Well, I agree with that. I'm focusing on the
19 GM issue, since that's where the objections, basically, with
20 the exception of the issue of, you know, which debtor should be
21 paying for this, the objections focus on the GM claim issues.
22 And in that respect, I think, flow back is irrelevant.
23 Although, obviously, it's really important--its absence is a
24 very important factor for the IUE. Okay. Now turning to the
25 provision which, as I read it, is in the same language, or

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1 formulation as the prior order, it says, that -- of the
2 proposed order it says that GM will have a claim that may be
3 asserted or assertable under the Master Separation Agreement.
4 This is kind of de ja vu all over again, but I just want to
5 explore for a moment what that means, the word "assertable," or
6 "may assert." Particularly given all of the reservations of
7 rights that the various committees and other parties in
8 interest, other than the debtor, have to object on any basis.
9 I think you mentioned before, in your remarks, that arguably
10 the provision -- the indemnification provision in Article 5 of
11 the MSA, could cover this, and clearly the creditors' committee
12 and the other objectors want to argue that it wouldn't cover
13 it, that this wouldn't fall under the definition of "Delphi
14 Liabilities," which is the defined term that's covered by the
15 MSA indemnity. And you used the phrase, as you did in the last
16 hearing, that what this agreement does is "channel GM's claim,"

17 in connection with this check-the-box program to this
18 particular indemnification agreement. If, under this
19 agreement, the creditors' committee wants to contend that it's
20 nevertheless, in the terms of its agreement, not a liability
21 that relates to, or arises out of, or in connection with the
22 Delphi Assets or fits any of the other provisions of Delphi
23 Liabilities, are they still free to do so?

24 MR. BUTLER: Your Honor, as we I think we -- my view of
25 that is, they have a limitation there. And the limitation that

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1 they have, in that circumstance, is they can't make the sort of
2 the -- what I would consider the circular argument, that
3 because we did this post-petition under this program, it
4 clearly couldn't have been asserted. They would have to take
5 it as a claim assertable -- as -- and assert it at the time of
6 that agreement. So they would have to be able -- General
7 Motors has the right to say, look, you can't nail me because I
8 agreed to do this voluntarily. I agreed to do this check-the-
9 box voluntarily, post-petition. You can't, by virtue of that
10 alone, say that I can't claim under this agreement. So its
11 assertable there, but all of the defenses that would exist with
12 respect to that claim coming into that channel, the obstacle
13 course, so to speak, would remain. So for example, most of the
14 things, I don't want to discuss them here because they've been
15 discussed with us in confidence. But most of the claims that I
16 have heard analyzed by the statutory committees and by the
17 creditors' committee go to much more significant issues
18 relating to conduct and other kinds of theories under the
19 bankruptcy code. But they would not be able to -- just like
20 the UAW program, you've already approved, they would not be
21 able to say that this is not allowable, because the mere

22 assertion of it as a post-petition matter is barred. It's
23 identical to the last program.

24 THE COURT: Okay.

25 MR. BUTLER: Mr. Kessler apparently wants to help me, from

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1 General Motors.

2 THE COURT: All right.

3 MR. KESSLER: Your Honor, I don't disagree with anything
4 Mr. Butler's saying. I think I would articulate it a little
5 differently. General Motor's understanding, and our agreement
6 is, that no one can object that our claim falls under the scope
7 of the indemnity provision of the Master Separation Agreement.
8 It is assertable under, comprehended by, deemed to exist under,
9 and they can't say that the language of the indemnity versus
10 what GM is doing don't fit. They're free to attack the Master
11 Separation Agreements and say it was a fraudulent -- it's
12 avoidable as a fraudulent conveyance. They're free to attempt
13 to subordinate the claim under subordination theories, but they
14 are not allowed to object to the claim as a claim that falls
15 under the language, comprehended by the indemnity.

16 MR. BUTLER: Just to be clear, they're free to use any
17 provision of the bankruptcy code they want to assert that
18 General Motors should not receive a claim, correct?

19 MR. KESSLER: Other than that it --

20 MR. BUTLER: That's not the bankruptcy claim. I'm asking
21 --

22 MR. KESSLER: Yes. Yes. I'm in agreement with what
23 you're saying.

24 THE COURT: Okay. In other words, if for some reason this
25 claim wouldn't be in respect of a payment on account of a

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1 ôDelphi Liability,ö which is the defined term that triggers the
2 indemnity, then, nevertheless, it'll be deemed to be a ôDelphi
3 Liability.ö

4 MR. BUTLER: Yes. Just like the prior program, the same
5 arrangement.

6 THE COURT: Okay.

7 MR. KESSLER: To say it more simply, I would say no one's
8 objection should be allowed on the grounds that Delphi did not
9 indemnify for this. I'm not arguing that Delphi had an
10 agreement that allows us to make a claim as Delphi indemnified
11 the release.

12 THE COURT: Okay. All right, now, of course, the
13 committee says the difference is that with the UAW program
14 there were specific agreements that covered it and here they
15 take the view that -- notwithstanding the benefit guaranty--GM
16 would not have a right to claim over, either on a common law
17 basis or under the basis of any agreement.

18 MR. BUTLER: Let's explore that. The committee's
19 position, as I understand it, is that the covenant -- remember
20 there were three channels the last time. One of those channels
21 was the MSA, same agreement. The flow back agreement which you
22 said was not relevant to the IUE. And then there was the
23 indemnity agreement, the covenant agreement, which was specific
24 to the benefit guaranty. I think it's fair to say that the
25 creditors' committee view was that, is now and will ever be,

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1 that the indemnity agreement that was related to the benefit
2 guaranty is a absolute fraudulent transfer. That it was

3 entered into -- and that this bankruptcy case was filed five
4 years and ten months following the execution of that, and
5 that's it's a fraudulent transfer. And they believe that.
6 Whether that's true or not, whether you only determine that, it
7 would be the case. But if that were true, just follow the
8 logic train, if that was true than the only -- and it's not --
9 this is not really a flow back matter, although, GM is free to
10 try and wiggle into the flow back channel if they choose to,
11 under the UAW one, and they can make that claim. And we can
12 all have -- including the debtors, can have our issues with
13 that, than the only avenue, if you follow the logic of the
14 committee, the creditors' committee, as they thought about the
15 UAW program, the only channel was the MS. The same place we
16 are today. So that the fact that the last hearing had a
17 channel that -- an additional channel that the creditors'
18 committee thought was a fraudulent transfer and not a channel
19 at all, ought not change the logic about why the MSR is
20 available this time as it was last year. You know, Your
21 Honor -- and I'll tell you, this is an example and we're going
22 to have many others, I think, during this case, as we try to
23 move towards reorganization, in which the debtor is trying to
24 get all sides to come to a common place on something that's
25 good for the estate, good for business enterprise value, good

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1 for the reorganization. And the problem is just as
2 vociferously as, you know, you mentioned the word claim and GM
3 in the same sentence. Everybody on the left-hand side of the
4 room, you know, goes almost, I think you said in our papers
5 fanatical, they would say not fanatical, just being
6 responsible, would be their view. On the other side of the
7 table, we have General Motors telling us, you mean, you want us

8 to do the same check-the-box arrangement. We had three claims
9 channels before in the optionality of that, you want us to
10 stick us into the master separation agreement alone with no
11 other way of getting there, under the same rules and conditions
12 as you did in the UAW. Because as Your Honor points out, the
13 words are the same. You know, and he wants to have -- it's all
14 or nothing. We either get through that channel, obstacle
15 course or we don't. And they said -- General Motors said to
16 us, that's not acceptable to us, we want you to crate a new
17 channel and they gave us the documentation for it, and we said
18 no, we won't do that. And so, Your Honor, we're trying to stay
19 faithful to the construct that we brought to this Court in
20 connection with the UAW program, the construct that you
21 approved, and the construct that is intended to allow us to
22 move forward in a manner which, on the merits of the actual
23 motion, nobody contests is in the best interest of the estate
24 as it relates to labor transformation acts.

25 THE COURT: Okay. Let's go back to the buyout for a

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1 moment. Which, I would say, applies to both the UAW and the
2 IUE. As I take it, the -- other than suggesting that the
3 debtors should have done a better job in negotiating with GM--
4 the objectors are saying that its not a binary choice, it's not
5 either buyout, on the one hand, or nothing. That there's some
6 way that the debtors, in essence, could force GM to -- in order
7 to channel GM, into honoring its benefits guaranty. At which
8 point, they would have all their objections to the
9 indemnification claim, because ultimately the argument is --
10 what their opposing is the allowed claim for the buyout when
11 what they're putting up against that is an indemnification
12 claim. Of course, that assumes that you have channeled this

13 process through the benefit guaranty as opposed to doing it as
14 part of the buyout. So, I guess, the issue is, did the debtors
15 consider some sort of alternative to doing the buyout that
16 would have gotten approximately the same results but had a
17 claim over that would not be allowed and would be subject,
18 fully, to objections.

19 MR. BUTLER: Your Honor, we explored a lot of
20 alternatives. The first one was just to have General Motors
21 fund it as it did the thirty-five thousand dollar incentive
22 payment for attrition, and not get anything. And General
23 Motors agreed to do that, by the way, in the IUE-CWA program.
24 You notice this program has yet another very extensive set of
25 payments by General Motors, thirty-five thousand times upped

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1 it, plus, their shares are being worked out of taxes and other
2 things, up to times eight, potentially, eight thousand people.
3 That number which can be in the hundreds of millions of
4 dollars, if you figure the total number out, I'm not sure of
5 how the exact math works. But that number they're already
6 putting out. And remember, as I said last time, with respect
7 to that number, they're reserving that to a comprehensive
8 settlement saying we're going to come back and try to get that
9 back from you, Delphi. But if we never reach another deal with
10 them, they have no claim against the estate with respect to
11 those numbers.

12 THE COURT: Right. No one's objecting to that.

13 MR. BUTLER: I -- of course they aren't, Your Honor. Nor
14 does anyone want to say, gee, that's a valuable part of the
15 program. And, you know, it's -- and that certainly, you know,
16 I can understand that, you know -- and I understand the basis
17 argument of the stake holders is gee, General Motors is

18 responsible for everything that ever went wrong at Delphi and,
19 therefore, they should pay everything and not get a claim back.
20 I understand that argument, that's their home run win which
21 puts equity back in the money, they're not currently there.
22 The problem, of course, is that doesn't give any realistic
23 assessment of the value that General Motor's adds to this case.
24 And the answer, as I have said from the first day, the answer
25 to this conundrum, will at the end of the day, be consensually

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1 negotiated. And the answer will be in the middle somewhere.
2 Somewhere between that line. And we did negotiate that, Your
3 Honor, with respect to General Motors. And what we were able
4 to achieve, was with respect to us wanting to lay off some of
5 this liability, in terms of having it funded now which is good
6 for cash flow, which I think is undisputable. And, which we
7 believe, ultimately, depending upon the currency and dividends
8 with respect to unsecured creditors provides a real additional
9 benefit to the estate such from a business judgment
10 perspective, I said before, and I think this still holds. A
11 claim that's been effectively subordinated from administrative
12 to unsecured, has to be better unless to your question, there's
13 another way of doing it. Now, in the objections, not one of
14 them proposes what that way is. Nor under the case law, do
15 people get to sort of say, okay, let's just remove from the
16 negotiations a single provision of a comprehensive agreement
17 because that's not how they get negotiated, ultimately. But
18 they don't offer that. And the fact is, you had a specific
19 question. Can the benefit guaranty be triggered by the debtors
20 unilaterally to create this channel over to the -- over to
21 the -- to General Motor's balance sheet. And I will tell Your
22 Honor, I think the most affective way of doing that is exactly

23 what the debtors are doing in the 1113, 1114 process. Should
24 we prevail on that then we will have channeled things over to
25 General Motors. And they will have all the claims against the

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1 estate that they may get and all the people could fight about
2 claims and we'll be right back here in the same discussion,
3 frankly, down the line if we're not able to consensually
4 resolve it at the bargaining table. But ultimately -- because
5 I don't believe, and I may be wrong, but I don't believe that
6 the unions will voluntarily do anything to cause that
7 particular guaranty to be triggered -- attempt to be triggered
8 without General Motors participation. Because of General
9 Motor's view, which I don't think -- whether they're right or
10 their wrong, whether there's a 1 percent risk or a 90 percent
11 risk, I don't believe the unions, at the end of the day -- our
12 experience has been that they're not going to take that risk
13 on. And so there is -- you know, the only way to go -- to the
14 entire benefit guaranty. But the way it gets triggered is
15 through having financial distress and through certain events
16 that occur. All right, including us not paying on our benefit
17 obligations. Your Honor and I both know under 1114 we have an
18 absolute obligation to pay these obligations unless and
19 until -- post-petition unless and until Your Honor modifies
20 them. Right, we can't get out of Chapter 11 under 1129, unless
21 we are able to prove that we did that. So from a retirement
22 benefits perspective how one is able to channel over to the
23 benefit guaranty without it being collectively bargained with
24 the unions and without an event occurring where we are
25 permissibly allowed under the law to stop paying, which

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1 triggers the guaranty. The only other way to do that, I think,
2 is through the 1113, 14 process which three of the four
3 objectors over here are opposed to, right? We get -- that's
4 the Alice in Wonderland world I live in. When I go to that tea
5 party these folks over there are saying don't do that either.
6 And ultimately, you know, we believe in the exercise of our
7 business judgment in trying to sort this out. That when you
8 look at the buyouts -- buyouts are important, nobody in this
9 room is disputing that. Buyouts are valuable to labor
10 transformation, nobody's disputing it. Should we pay it all
11 for ourselves, fund it entirely from the post-petition estate,
12 which is economically worse to every stake holder if we do
13 that, or should we try to get GM to step in and fund part of it
14 and subordinate what would otherwise be an administrative
15 claim. I would submit, Your Honor, the debtors' business
16 judgment here, you know, far surpasses any 363 standard we
17 would have to deal with.

18 THE COURT: Okay. Thank you.

19 MR. KENNEDY: Your Honor, Tom Kennedy, for the IUE. Since
20 the IUE's name was mentioned. I thought I would stand to
21 answer any questions the Court might have. I think, though it
22 surprises me to say this, Mr. Butler pretty accurately
23 represented the circumstances.

24 THE COURT: For now we're not at the tea party.

25 MR. KENNEDY: I'm not at the tea party. We all shift our

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1 sides in this particular scrum, Your Honor. But there's a
2 couple of things that I did want to emphasize. The check-the-
3 box opportunity for IUE-CWA employees was an incredibly
4 important part of reaching a consensual agreement that we

5 anticipate that our membership will be supportive of.
6 Remembering that, as opposed to other issues in a bankruptcy
7 proceeding, this is not simply a dollars and cents issue. It
8 is health care for retirees. And the prospect of any
9 significance that that health care could be interrupted is one
10 of such a daunting nature to the unions that Mr. Butler is
11 certainly correct, that we much prefer and would not accept an
12 alternative to a certain transition of health care from Delphi,
13 in this case to those who check the box, to General Motors. It
14 is true there's a General Motor's claim and a guaranty that we
15 fully intend to enforce, if and when, the prospect presents
16 itself. But there are many possible slips between an assertion
17 of the guaranty and the actual provision of health care. And
18 the check-the-box opportunity is a certain procedurally simple,
19 administratively definite opportunity for our members to
20 achieve a continuation of the healthcare and benefits that, I
21 hope I don't need to emphasize to the Court, as being
22 important. It is necessary for General Motors to be a
23 participant in any negotiations that are going to be successful
24 in reorganizing this company. In our negotiations, which were
25 unfortunately delayed, we participated fully with both General

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1 Motors at times, with Delphi at times and with them together,
2 at times. They made demands as to the form of the agreement
3 that included the language for the most part that had
4 previously been in the UAW order. The agreement we have is
5 conditioned at paragraph 3(a), as attached to the moving
6 documents, is conditioned to finding the order acceptable to
7 IUE-CWA, Delphi and General Motors. And given the
8 circumstances in which we are now in, in which this buyout
9 programs is being ruled out to the factories that IUE-CWA

10 represents, and the membership is in the process of signing up.
11 If, in fact, there's uncertainty about the approval of that
12 order or its implementation it will retard the effective
13 implementation of this program and, I believe, be a detriment
14 to the reorganization of this company. The negotiations going
15 forward will be even more difficult than ones we just finished.
16 As we discussed the terms and conditions of employment that are
17 going to be applicable.

18 THE COURT: You mean if this weren't approved, or if it
19 were delayed.

20 MR. KENNEDY: If this weren't approved, Your Honor, it
21 would be a classic attempt to repair an omelet. There's just
22 no way the parties could meet again and convince our
23 membership, in many different factors in many different states,
24 8,500 of them, that they should be confident that any program
25 we reach will be approved by this Court. It would be difficult

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1 and retard, I think, significantly and for a long time our
2 ability to reach a meaningful agreement.

3 THE COURT: I guess implicit in that is, I guess -- well
4 you tell me--is the flip side of that also, implicit in what
5 you said -- would you confirm what Mr. Butler said that if this
6 is approved it would facilitate remaining negotiations under
7 1113 and 1114 because you'll arguably have had a smaller work
8 force and --

9 MR. KENNEDY: Exactly, Your Honor. I think I would even
10 go further than Mr. Butler. The nature of those discussions
11 are going to be dramatically impacted by the take rate for the
12 program that we have established. We know the take rate in the
13 UAW factories. We anticipate that it will be at least, as
14 good, if not better -- higher -- I don't know if the word

15 better is appropriate. Higher, in any event, because of the
16 lack of flow back opportunities of IUE-CWE members into GM
17 plants. So that we anticipate there will be a high take rate
18 which will give us a profile of our workforce that would make
19 much easier the opportunity to negotiate a going forward labor
20 agreement. If we are uncertain as to those numbers, because
21 this program is delayed due to actions in this Court, but will
22 impede our ability reach a full agreement.

23 THE COURT: Okay.

24 MR. KENNEDY: The GM position needs to be present in a big
25 way in our subsequent discussions as well. I think if the

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1 repeated objections to these claim figures which -- or claim
2 processes, I guess I should say, which we don't believe are
3 well grounded, are entertained or accepted by the Court, I
4 think its going to be more difficult to bring General Motors to
5 the table in our subsequent negotiations as well. And we fear
6 that in the course of the discussions over the claims, it
7 really should be put off to a different part of this
8 proceeding. It will have an impact on General Motor's ability
9 or willingness to come forward and present funds if they're not
10 obligated to present. And that, we would suggest to you, is a
11 reason to act, and act swiftly, with respect to these
12 objections. That as I've said, we believe, are not well
13 grounded. And I'll summarize it to a single point. We could
14 have insisted rather than leave uncertain this order. That
15 Delphi agreed to fund every aspect of this separation program.
16 We didn't, first, because we were happy to have General Motors
17 as part of the process because if goes well for their being
18 part of a continuing process that we need them there for. And
19 secondly, because we understood, even as labor union people,

20 that if the less cash the debtor used to put this program into
21 operation the greater the likelihood that it will continue as a
22 functioning company, it will successfully reorganize and will
23 save as many jobs as possible. So since this could have been
24 done by cash, for the objectors to contend that they've
25 materially been harmed by doing it in the manner in which it

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1 has been done, simply doesn't pass our view of the common sense
2 test. So, if the Court has no other questions, I'll end at
3 that point.

4 THE COURT: No, that's okay. Thank you.

5 MR. KENNEDY: Sure.

6 MS. CECCOTTI: Good morning, Your Honor. Babette
7 Ceccotti, for the UAW. We did file a short statement in
8 support of the motion in its entirety today. And, other than
9 to make just a couple of points now, I'd like to just reserve
10 an opportunity to perhaps augment Mr. Butler's rebuttal once
11 the objector's arguments are finished. Depending, again, on
12 the Court's questions. The UAW views the supplement to the
13 program is critical and believes, in terms of the expanded
14 opportunities that it would provide, we think that the Court's
15 observations in reproving the last -- the initial program are
16 equally pertinent for the reasons that the Court observed in
17 April. It's important to have the expanded incentive
18 opportunities and the supplement represents in the UAW's view,
19 a very important and constructive step forward in the framework
20 that the parties established and that the Court heard very much
21 about in the context of the 1113 process. So we certainly rise
22 in support of the motion today. And unless the Court has any
23 questions, we'll just simply wait and see if the objector's
24 comments cause me to rise again.

25 THE COURT: Okay. Thank you. Anyone else in support of

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1 the motion? Okay. I'll hear from the objectors then.

2 MR. SEIDER: Your Honor, Mitchell Seider, Latham & Watkins
3 on behalf of the unsecured creditors' committee. Your Honor,
4 because we understand this to be in the nature of final
5 argument, we would like to have an opportunity to hear Mr.
6 Resnick's testimony which Mr. Butler alluded to before making
7 final argument, if that will be acceptable to Your Honor.

8 THE COURT: Well, it's up to him whether he wants to put
9 in any testimony.

10 MR. BUTLER: I think, the Court said it may have
11 questions. I thought what the record said was the Court said
12 he may have further questions of Mr. Resnick after he hears the
13 positions that the objections were taking. Now I certainly --
14 I'll do whatever you want, Your Honor. If the Court wants to
15 ask questions now --

16 THE COURT: I mean, this is ultimately -- it seems to me
17 largely a legal analysis. And he said it before, and usually I
18 confirm this. Mr. Butler, you were involved in these
19 negotiations yourself, right?

20 MR. BUTLER: Yes I was, Your Honor. But, Your Honor, the
21 one thing I would ask when you say is, there certainly is a
22 legal analysis to be applied to the facts, but business
23 judgments factual based.

24 THE COURT: I understand.

25 MR. BUTLER: Your Honor, I know you do. I just want to --

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1 THE COURT: I just -- I leave it up to you, but I gather -
2 - I don't think I need his testimony.

3 MR. BUTLER: Okay. Thank you, Your Honor.

4 MR. SEIDER: Thank you, Your Honor. Your Honor, the
5 debtors tell us that the approval of these programs will have a
6 number of beneficial effects on the estate. We're told that
7 cash flow will improve, that head count will be reduced at a
8 number of the debtors' facilities, which the debtors have
9 deemed to be non-core facility. That there will be a positive
10 impact on the debtors' ongoing labor negotiations. And that
11 the programs will lead to a reduction in operating losses.
12 The committee certainly supports the debtor in its effort to
13 achieve all of these goals and the committee, Your Honor,
14 accepts the debtors' conclusion that the implementation of
15 these programs on the benefit side to the IUE and the UAW will
16 foster and assist the debtors in reaching those goals. Where
17 the committee, Your Honor and the debtors have apart company,
18 is whether the debtors have in the words of Mr. Butler, chosen
19 the most rational and appropriately economic path for arriving
20 at that place. Your Honor, there is a large record before you
21 that bears upon that question. The debtors have not discussed
22 it in any detail with you. We would like an opportunity to do
23 so. I'd like to start, Your Honor, by talking about what GM
24 gives here and then turn to what GM takes in return. As we see
25 it, Your Honor, there are three principal things that GM is

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1 putting into this process. First, it's putting in
2 approximately fifty-six million dollars on account of the
3 thirty-five thousand dollar payments to the eligible IUE
4 retirees who the debtors project will accept the early
5 retirement program. Contrary to what Mr. Butler has said, we

6 will say that that is a valuable part of the program. Your
7 Honor, the second piece is the allowed claim that arises from
8 GM's fifty cent on the dollar contribution to the buyout
9 program for those members of the IUE and the UAW who are not
10 eligible for the early retirement portion of the program.
11 Based again, Your Honor, on the debtors' testimony, I believe
12 it's Mr. Sheehan's declaration, that approximately 20 percent
13 of those eligible for this program are expected to participate.
14 That will provide GM with an allowed claim -- excuse me, Your
15 Honor, that will require a contribution of a 135 million
16 dollars which the debtors will treat as an allowed claim. And
17 lastly --

18 THE COURT: That covers both --

19 MR. SEIDER: That's correct.

20 THE COURT: -- UAW and IUE.

21 MR. SEIDER: Yes, Your Honor.

22 THE COURT: Right.

23 MR. SEIDER: And then lastly, Your Honor, the third part
24 is GM's agreement to take on direct OPEB liability with respect
25 to those who check the box under the early retirement portion

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1 of the program. Now, what does GM take in return for these
2 contributions? It will of course, as Mr. Butler told us at the
3 hearings held in April, put on its plate for the final score
4 card at a final settlement what it is contributing towards the
5 thirty-five thousand dollar payment to the early retirees, the
6 fifty-six million dollars I mentioned a moment ago. Your
7 Honor, GM will also get the allowed unsecured senior claim of a
8 135 million dollars. I would like to stop there for a moment
9 before -- and not just brush by that the way in which, I think,
10 the debtors did. That 135 million dollar claim, Your Honor,

11 has real value and it has real value today. As the debtors'
12 stipulation indicated, Your Honor, or supports, Your Honor, an
13 allowed senior claim at Delphi Corp. now, in the form of the
14 notes, is bid at about eighty-two cents on the dollar --

15 THE COURT: When you say "senior claim" you don't -- what
16 do you mean?

17 MR. SEIDER: Senior are unsecured, Your Honor.

18 THE COURT: But it's not, it's not senior to any other
19 unsecured claim?

20 MR. SEIDER: No, it would be pari passu, as we understand
21 it, Your Honor, with those 6.55 percent notes that we had the
22 stipulation on that were bid at eighty-two and three quarter
23 cents as of the beginning of this week.

24 THE COURT: Okay.

25 MR. SEIDER: At eighty cents --

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1 THE COURT: Well -- no one has subordinated their claim to
2 it, right?

3 MR. SEIDER: That is correct, Your Honor.

4 THE COURT: Okay.

5 MR. SEIDER: Right. Now, at eighty cents, that 135
6 million dollar claim could be liquidated for about 108 million
7 dollars. That comes back to GM on its claim and has to be
8 netted in the equation here.

9 Now, what else does GM get, Your Honor? GM gets
10 insulation from very significant OPEB liabilities, albeit
11 contingent ones, on behalf of those who are projected to accept
12 the buyout. Based upon the debtors' numbers that were provided
13 to us -- and that, Your Honor, is set forth at Exhibit 39, I
14 believe -- the pool for OPEB, or, excuse me, the OPEB liability
15 for those eligible for the buyouts totals approximately 900

16 million dollars.

17 Again, Your Honor, using the debtors' projected acceptance
18 rate in that pool of people of 20 percent, that's 180 million
19 dollars. Because those employees, by virtue of taking the
20 buyout, will be walking away from all future OPEB claims, that
21 is a liability -- a contingent liability, but nevertheless a
22 180 million dollar liability that GM is relieved from

23 Your Honor, GM will also receive the ability to assert,
24 under the Master Separation Agreement, a claim for the OPEB of
25 those employees who check the box and choose retirement at GM,

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1 by virtue of checking the box. And there are two portions to
2 that, if you will, Your Honor. One for the IUE, one for the
3 UAW.

4 With respect to the IUE, based upon the debtors'
5 projection -- and this is in the Rothschild numbers as well --
6 based on the debtors' projection that 75 percent of the six
7 hundred eligi -- excuse me, 75 percent of the eligible IUE
8 employees will check the box, that means that of the 600
9 million dollars in OPEB liability associated with that pool,
10 approximately 450 million of it will be available to GM in the
11 form of a claim under the Master Separation Agreement.

12 With respect to the UAW side of the check-the-box, now the
13 twenty-six year group, according to Mr. Sheehan's testimony in
14 deposition on Monday that -- there are 400 eligible UAW workers
15 in that twenty-six year group. Again using the debtors'
16 projection that 75 percent of the pool will check the box, that
17 leaves 300 UAW workers electing that option. Again using the
18 debtors' number -- and this is Mr. Sheehan's testimony -- of
19 approximately 200 thousand dollars in OPEB liability per
20 employee, that creates another sixty million dollars in claim

21 for GM under the Master Separation Agreement, leaving a total
22 claim, Your Honor, of approximately 510 million dollars under
23 the Master Separation Agreement.

24 Now, we are told, Your Honor, by the debtors that there is
25 no alternative that makes economic sense other than the

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1 alternative which the debtors have chosen. Your Honor we
2 think, however that there is an alternative, and we think that
3 it's a more economic one.

4 To go back to the amount of money that GM is putting into
5 this program, the 135 million for buyouts and the fifty-six
6 million for the thirty-five thousand dollar payments. That
7 totals a contribution from GM of 191 million dollars. Now, the
8 debtors have the ability, they have the liquidity and they have
9 the room on the DIP to borrow 191 million dollars, Your Honor.
10 There are enormous benefits that would flow to the estate by
11 avoiding GM's participation in this program and by -- through
12 the debtors instead, electing to borrow on the DIP or use
13 liquidity which they already have.

14 Among other things, Your Honor, we avoid transferring to
15 GM a certain value of approximately 108 million dollars through
16 the allowed claim for the buyout contribution. We would
17 preclude GM from asserting a claim for up to 510 million
18 dollars on the basis of the OPEB liability for those who check
19 the box.

20 THE COURT: Right, I'm sorry -- let me back -- I
21 understood your first point, I guess, but I didn't understand
22 your math.

23 MR. SEIDER: On the OPEB?

24 THE COURT: No, on the buyout.

25 MR. SEIDER: On the 108?

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1 THE COURT: Yeah.

2 MR. SEIDER: Yes, Your Honor. Eighty percent of 135
3 million dollars is approximately 108 million dollars.

4 THE COURT: Oh, okay.

5 MR. SEIDER: Those claims that are now bid -- those claims
6 are now pari passu with the claim GM would have, are bid as of
7 Monday at eighty-two and three quarter cents. Your Honor, the
8 final --

9 THE COURT: But just let me explore that for a moment.
10 The debtors are out 135 million dollars more, right?

11 MR. SEIDER: That's correct.

12 THE COURT: And by doing the buyout, GM is still insulated
13 from the benefit guaranty, isn't it?

14 MR. SEIDER: With respect to those that take the buyout it
15 is, that's correct.

16 THE COURT: So why isn't it just a comparison of 135
17 million verses some percentage of 180?

18 MR. SEIDER: Because, Your Honor, GM also can receive and
19 will receive a recovery on the OPEB claim that goes along as
20 part of this program. And when you put that --

21 THE COURT: No, but isn't that the 180?

22 MR. SEIDER: Excuse me?

23 THE COURT: Isn't that the 180? Oh no, I'm sorry, you're
24 switching to OPEB, you're switching to OPEB?

25 MR. SEIDER: Yes. But it all goes together.

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1 THE COURT: All right, but okay, then turning to OPEB, how
2 do you borrow on the DIP to pay the OPEB?

3 MR. SEIDER: Well let me address that, Your Honor.

4 THE COURT: Okay.

5 MS. SEIDER: You don't borrow on the DIP to pay the OPEB.

6 THE COURT: Okay.

7 MR. SEIDER: Because, as the OPEB exists on the debtors'
8 balance sheet today, the OPEB that would be transferred -- it
9 is an accounting obligation. It is not a cash expense. It
10 gets paid out over time.

11 Once the OPEB liability under this program transfers to GM
12 -- and I shouldn't say transfers, because there is no release
13 for the debtors. Once GM undertakes, directly, the liability
14 for that OPEB, it can come back immediately and assert a claim.
15 And that claim, again, based on the value of Delphi Corp
16 general, unsecured claims, has real, current value, okay? And,
17 again that's 510 million dollars of claim that can be
18 monetized.

19 THE COURT: But -- you're kind of gliding over the
20 introductory clause to what you just said, which is "once GM
21 takes on the OPEB." When are they going to do that?

22 MR. SEIDER: I'm sorry? I didn't hear you --

23 THE COURT: Your logic assumes that GM has taken on the
24 OPEB. When are they going to do that?

25 MR. SEIDER: They are going to do that under this program.

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1 Absent their participation in this program, they won't. Once
2 they do, they have the claim. If they don't, they don't
3 necessarily have the claim.

4 THE COURT: So, in essence, you're asking me to play
5 chicken with them.

6 MR. SEIDER: No, Your Honor. We're not asking you to play
7 chicken. We would be asking you to play chicken if the debtors

8 did not have more than enough room under the DIP to borrow the
9 additional 191 million dollars. These programs can self-fund.

10 THE COURT: Well, but unless you're saying that you're
11 going to take out the check-the-box aspect of this attrition
12 program, how can I assume that if the debtor is funding the
13 buyout that everything else in the program will flow along,
14 without GM getting some sort of right to some sort of claim?

15 MR. SEIDER: Yes. I understand your point, Your Honor.
16 Your Honor, first, as Mr. Sheehan testified, regardless of
17 whether this program is approved or not, Delphi still has
18 liability for the OPEB. Under the benefit guaranty GM has
19 liability for the OPEB. It's a current liability of GM. The
20 benefit guaranty is there, and if the guaranty gets triggered,
21 it's liable. So, Delphi's not getting released and GM's not
22 getting released regardless of whether the program is approved
23 or not. It remains the same.

24 THE COURT: Well, so you dispute Mr. Butler's assertion
25 that you can't put the OPEB to GM today? You can't get the

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1 equivalent or the near equivalent of the check-the-box option
2 today?

3 MR. SEIDER: You can't -- I don't know that GM would agree
4 to the equivalent of the check-the-box option. But what we're
5 saying, Your Honor, is Delphi is currently is paying OPEB. The
6 benefit guaranty has not been triggered. If the programs are
7 not approved, Delphi will continue to pay that OPEB, and if it
8 stops, the guarantee is still there. And I do want to make
9 another point on that score, Your Honor.

10 THE COURT: Well, is it -- well, let me understand this.
11 Isn't the difference -- you're saying there's no material
12 difference between the check-the-box aspect of this attrition

13 program and what Delphi's doing already?

14 MR. SEIDER: From whose perspective, Your Honor?

15 THE COURT: From either Delphi's or the unions?

16 MR. SEIDER: Well, the employees, Your Honor, should
17 seamlessly continue to receive the OPEB benefits that they're
18 entitled to. And if that's interrupted, the rights again will
19 be the same pre-program and post-program. GM is there with the
20 program or without, and Delphi is there with the program or
21 without.

22 THE COURT: But I want to go back to when I introduced
23 this, which is that the committee supports what the debtor is
24 doing in this program vis-a-vis the two unions, because of all
25 the reasons that Mr. Butler and you detailed. The union, in

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1 this case it's just the union because -- I'm sorry -- the
2 twenty-six year group also has to check the box, so it's both
3 of the unions -- have said that that's a very critical element
4 of this program. Are you saying it could be carved out of the
5 program and Delphi can achieve the same results?

6 MR. SEIDER: Your Honor, I don't think that it can be
7 carved out of the program by you, but what we are saying is
8 that from an economic perspective, as I said a moment ago, the
9 liability remains. It's there. The protection of the guaranty
10 doesn't go away if this program is not approved as it's
11 currently constructed. So from the perspective of the
12 employees, they have the same balance sheet to look to
13 regardless of whether the program is approved or not.

14 THE COURT: Well, is there a benefit to the debtors, vis-
15 a-vis the unions, of having it in the agreement or not?

16 MR. SEIDER: I don't know the answer to that, Your Honor.
17 We haven't heard it from -- I haven't heard it from the

18 debtors' witnesses.

19 THE COURT: Okay.

20 MR. SEIDER: Your Honor, the 510 million dollar claim that
21 goes from being an accounting liability on the debtors' books
22 to a cash liability in the form of a claim to GM, again has
23 significant cash value. Eighty percent of 510 million dollars,
24 Your Honor, is about 408 million dollars. If the program is
25 not approved, Your Honor, that 510 million dollars of

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1 accounting expense on Delphi's books will not become
2 convertible into a claim with a value of 408 million dollars
3 and a claim of 510 million dollars which must be answered for
4 in a plan of reorganization.

5 Additionally, Your Honor, by doing the attrition programs
6 without GM, Delphi would also avoid having to settle-up, if you
7 will, for the fifty-six million dollars represented by the
8 payments on the thirty-five thousand dollars at some future
9 point when a final deal is done between Delphi and GM, if one
10 is ever done.

11 Also, Your Honor, by not doing the programs as they've
12 been currently structured -- by doing them without GM, Your
13 honor, the estates would not be giving up any rights at all
14 vis-a-vis GM.

15 THE COURT: But, again I come back to this. I could see
16 how you could do the buyouts without GM, although frankly, I
17 don't understand the math on that point. But I don't see how
18 you could do the OPEB check-the-box program without GM? That's
19 not what you really mean, is it?

20 MR. SEIDER: No, it's not, Your Honor.

21 THE COURT: Okay.

22 MR. SEIDER: What we do mean is that OPEB benefits can

23 continue to flow seamlessly, and if there is an interruption
24 without doing the check-the-box program, the balance sheet to
25 which the employees can look are the exact same balance sheets

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1 they can look to if we do the programs.

2 Now, with respect to the math on the buyouts, Your Honor,
3 yes, it's eight cents on the dollar, but this program, I think
4 as we've been told by the debtor or these programs rise and
5 fall as a whole. And so, that math has to be factored into the
6 OPEB math as well. And when we put it all together, and I'll
7 get there in a moment, Your Honor, from our perspective the
8 economics of doing the programs -- the buyout program -- and
9 not doing it the way that it's been structured with GM's
10 participation make good economic sense to the committee.

11 Your Honor, if these programs -- if the buyouts were done
12 without GM, it would require about another 191 million dollars
13 either in liquidity or DIP borrowing. If it were done in that
14 way, however, the estates would be able to keep approximately
15 516 million dollars in current value, and would also retain
16 that 510 million dollars in accounting obligation for the OPEB
17 --

18 THE COURT: But that's just an accounting basis, right?

19 MR. SEIDER: No, it's not, Your Honor --

20 THE COURT: I mean, they would still have the liability

21 MR. SEIDER: Your Honor, it's not an accounting basis.

22 And here's why: the 510 million dollars, Your Honor, gets paid
23 out over time, it is subject to being discounted back to a
24 present value because it's a future expense and, Your Honor,
25 the contract that gives rise to that claim is up for -- or

1 expires on its terms in September '07. Now will the next
2 contract have OPEB at a dramatically lower rate? I don't know.
3 Will it be a somewhat lower rate? I don't know. But based
4 upon what Your Honor has heard in this case, and it's not
5 unreasonable to presume that it's not going to be higher. And
6 so, by the time we're done taking that 510 in current
7 accounting expense and converting into a cash equivalent so
8 that apples can be compared to apples, we've discounted it back
9 and we've also factored in something for the change that will
10 happen in future OPEB obligations, Your Honor, that resulting
11 number from that exercise is going to be a whole lot less than
12 the difference between the 516 million in value that goes to GM
13 through the program, less the 191 million dollars you have to
14 borrow additionally to get there. Or, said another way, Your
15 Honor, that 510 in future OPEB expense on a current value basis
16 is going to be significantly less than the 325 million dollar
17 delta between the 516 and the 191.

18 THE COURT: Well, let me explore that. First of all, I
19 guess what you're saying, it seems, is that there would be no
20 further pursuit of the 1113, 1114 motion. You just let the
21 contracts expire at the end of the year, right?

22 MR. SEIDER: No, no, Your Honor, I was simply using that
23 as a --

24 THE COURT: The year 2007.

25 MR. SEIDER: -- fallback. So if, for some reason the

1 process doesn't need a negotiated resolution or if, for some
2 reason, there's not a judicial decision by the time of
3 expiration, at a bare minimum we are left with the

4 renegotiation of the contract in '07.

5 Yes, there are likely to be intervening events between now
6 and then, either in the form of a settlement or in the form of
7 judicial action, but we think it is certainly more likely than
8 not that those intervening events will lead to not greater OPEB
9 packages in the future, but reduced OPEB packages in the
10 future, which, in turn, drives that 510 and retained accounting
11 expense down.

12 THE COURT: Well wouldn't, in real dollars, the OPEB
13 guaranty still be called upon?

14 MR. SEIDER: Yes, it would be. And then the claim --
15 you're talking about the GM benefit guarantee, Your Honor?
16 Yes. And then it comes back through the indemnity guaranty
17 subject to all the defenses and all of the infirmities that may
18 exist with respect to the indemnity guaranty.

19 THE COURT: And, you believe there's no common-law right
20 of subrogation or contribution?

21 MR. SEIDER: Your Honor, there may be. And we're happy to
22 defend it. We feel good about that one, Your Honor.

23 THE COURT: Well I guess when you actually try to quantify
24 it, the claim itself, that is an accounting matter too.
25 Because the fact that it's trading at eighty-two cents on the

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1 dollar today means nothing, right? In terms of the actual
2 dollars that the debtor will spend?

3 MR. SEIDER: It means more than nothing, Your Honor.

4 THE COURT: No, no, in terms of the dollars out. You're
5 comparing future dollars out under one scenario where this
6 arrangement's not approved and the debtor basically goes back
7 to the drawing board and pays 100 percent of the buyout plus
8 the thirty-five thousand dollar per person payments, and then

9 just pays OPEB in the ordinary course, until something happens,
10 upon which -- when it will all be accelerated anyway, when that
11 thing happens, sometime between now and 2007.

12 MR. SEIDER: Crystallized, if something happens, yes.

13 THE COURT: All right. Well. At the same time the
14 debtor's not paying out dollars today in respect of declaring
15 that GM is allowed to assert for OPEB.

16 MR. SEIDER: That is true, Your Honor, but if the claim
17 can be liquidated, that is value that flows to GM, and it's
18 GM's --

19 THE COURT: But as far as the debtors are concerned, that
20 doesn't mean anything.

21 MR. SEIDER: It doesn't mean anything yet. But when the
22 purchaser or purchasers of the claim come back for treatment of
23 their allowed claim it will. And yes, there will be --

24 THE COURT: Listen. Don't mix apples and oranges. If
25 you're talking about present quantifiable benefits under two

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1 different scenarios, you should -- I'm looking at the debtors'
2 perspective, not GM's perspective. It's -- either way it's pay
3 in the future, right?

4 MR. SEIDER: It's paid through a plan, that's correct.

5 THE COURT: Okay, so --

6 MR. SEIDER: And how far in the future that is, we shall
7 see.

8 THE COURT: Right.

9 MR. SEIDER: But it's not five years or the life, for
10 instance, of a forty-five year old on a current mortality
11 table.

12 THE COURT: But it -- but don't you think it's fair to
13 assume that there will be some crystallization of OPEB, which

14 includes an invocation of the GM benefit guaranty at some point
15 in the relatively near future in this case, under either
16 scenario?

17 MR. SEIDER: Yes, Your Honor.

18 THE COURT: And, so therefore the only real difference is
19 the preservation of extra arguments to object to that claim,
20 right?

21 MR. SEIDER: From the perspective of the debtors?

22 THE COURT: Yes.

23 MR. SEIDER: And the estates?

24 THE COURT: Yes.

25 MR. SEIDER: Yes, Your Honor.

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1 THE COURT: Okay. So what I'm really supposed to weigh
2 here is those arguments verses the benefits of having this
3 program, the whole program, today?

4 MR. SEIDER: From the perspective of the debtors alone?

5 THE COURT: And their estates, of course.

6 MR. SEIDER: Well, we have a different perspective on
7 that, Your Honor, because we do factor in that OPEB liability
8 which will have to be dealt with at plan time. We would much
9 prefer, from our perspective as creditors, to have 510 million
10 dollars of future OPEB expense, than having a 408 million
11 dollar senior -- excuse me, 510 million dollar general
12 unsecured claim at the Delphi Corp level. Because the OPEB
13 future expense in current value is much less than the 510 in
14 current general unsecured claim.

15 THE COURT: Either way it's a liability.

16 MR. SEIDER: Sure it's a liability, Your Honor, but
17 liabilities are associated with value. And I, on the other
18 side of the coin, would much rather collect on my 510 million

19 dollars at eighty cents on the dollar six months, a year from
20 now, than wait over the life of an OPEB payout for 510 which is
21 coming down anyway.

22 THE COURT: And how long do you think the life of that
23 payout is going to be here?

24 MR. SEIDER: Well, Your Honor, that depends on the
25 mortality tables. The pool of people who create that have

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1 twenty-six to thirty years in. I don't know the --

2 THE COURT: So you think this is going to be a twenty-six
3 or thirty year case?

4 MR. SEIDER: No, no, no, Your Honor. No, no, no, Your
5 Honor.

6 THE COURT: No, I'm saying -- I'm being somewhat
7 facetious, but don't you think that the OPEB, including GM's
8 guaranty is going to be crystallized in this case, one way or
9 another?

10 MR. SEIDER: Yes.

11 THE COURT: So won't that give rise to a claim at that
12 point?

13 MR. SEIDER: It will give rise to a claim, Your Honor,
14 that is subject to --

15 THE COURT: And at that point people can value it at
16 eighty-two cents on the dollar, or fifteen cents on the dollar
17 if you --

18 MR. SEIDER: Yes.

19 THE COURT: -- believe that the union negotiations are
20 falling apart, contrary to the reports in the press that people
21 are reacting to right now, which is why they're willing to
22 spend eighty-two cents on the dollar?

23 MR. SEIDER: Yes, Your Honor. But let's compare the 510

24 on the one hand as a claim under the program and the 510 as a
25 crystallized liability under the GM benefit guaranty.

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1 THE COURT: Right.

2 MR. SEIDER: Okay? Under the GM benefit guaranty, that
3 claim is subject to a number of defenses which are very
4 valuable and viable defenses from a legal standpoint, and is
5 subject to reduction to some extent -- as I think as Mr. Butler
6 alluded to in his argument on other grounds as well -- verses a
7 claim that is not subject to the same defenses and reductions.
8 And we think that those defenses, I think Your Honor alluded to
9 this a little while ago. Those defenses have real value to us,
10 Your Honor.

11 THE COURT: Well, there's the -- I understand two points,
12 maybe there's more that I'm not focusing on here. The first
13 point is, of course that there's no direct benefit guaranty
14 indemnity for the IUE --

15 MR. SEIDER: That's correct.

16 THE COURT: -- obligation that GM has.

17 MR. SEIDER: And no -- yes, no direct indemnity, that's
18 correct.

19 THE COURT: The second point is that even with respect to
20 the UAW the 1999 direct indemnity may be more subject, although
21 not necessarily exclusively subject, than the MSA indemnity to
22 avoidance.

23 MR. SEIDER: Yes, Your Honor.

24 THE COURT: Although, you obviously are going to
25 preserving your rights on avoiding the MSA too.

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1 MR. SEIDER: Yes, Your Honor. One additional difference,
2 if I might just interrupt for a second. The MSA also, is with
3 multiple debtors. The indemnity is just with Delphi Corp.

4 THE COURT: I understand. But Mr. Fox may like that fact.
5 So, is there something else? I mean, are all the other --
6 this is a genuine question, it's not a rhetorical question--how
7 else does making the claim assertable again through the MSA
8 adversely affect the estates and conversely improve GM's
9 position?

10 MR. SEIDER: GM has the liability under the benefit
11 guaranty. If it came in, or tried to come in through the MSA
12 without the order that you've been asked to enter today, I
13 don't think that there would be more than a -- even a scintilla
14 of a chance that it would succeed on the face of the terms of
15 the MSA. But that obviously doesn't conflict --

16 THE COURT: But we covered that point, okay.

17 MR. SEIDER: Yes.

18 THE COURT: All right. Okay.

19 MR. SEIDER: All right, if I might just recap this very
20 quickly for Your Honor. From our perspective, Your Honor, the
21 325 million dollars in cash that would be saved or value that
22 would be saved substantially outweighs the ongoing OPEB
23 liability that would be kept by these estates and still
24 shouldered by GM in the event the motion today were denied. If
25 the Court is inclined to grant the motion it would like, Your

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1 Honor, authority from the Court for the committee to assert the
2 defenses and other claims that the estates may have with
3 respect to any claims that come back through these programs, at
4 least to the extent that the debtors have agreed that they will
5 not, themselves, assert those defenses. We are not asking for

6 authority any broader than that. We simply want to be able to
7 play defense, Your Honor, with both hands, not with one tied
8 behind our backs.

9 THE COURT: Well on that score I think that, ultimately
10 your request, as you've just limited it, may make sense and it
11 may be something you can negotiate consensually with the
12 debtors. I think procedurally, particularly give some of the
13 pressure in some of the other circuits that STN and Commodore,
14 you know other circuits at least don't necessarily follow along
15 the lines of the Second Circuit law--it's better to do that by
16 separate motion or, preferably by a stipulation.

17 MR. SEIDER: We certainly understand that, Your Honor. We
18 merely raised it now because we thought that this was an
19 opportunity or, I should say, a point in time when we really
20 did need to be raised.

21 THE COURT: Right, well, I think that given the schedule
22 that this case is under, it's something that you should just
23 discuss promptly with the debtor --

24 MR. SEIDER: We will, Your Honor.

25 THE COURT: -- and if something can't be resolved then,

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1 you know, you can make a motion.

2 MR. SEIDER: Thank you, Your Honor.

3 THE COURT: Okay.

4 MS. STEINGART: Good afternoon, Your Honor. Bonnie
5 Steingart from Fried, Frank on behalf of the Official Committee
6 of Equity Holders. I think that Your Honor appreciates what
7 the issues are. The debtors' request and form of order now
8 relies on two assumptions. One is that claims that have been
9 given to GM in connection with the program are assertable under
10 the Master Separation Agreement. I think as the Creditors'

11 Committee has made clear, there are serious questions about
12 that. There has been no evidence presented about what that
13 agreement is, what the terms of it were, what the other --

14 THE COURT: I'm sorry, which agreement?

15 MS. STEINGART: The Master Separation Agreement.

16 THE COURT: It in the -- I mean, I have it. It's in the
17 record of the Chapter 11 case, I've read it. For purposes of
18 this hearing, I'll accept what you people say, which is that
19 there's a substantial issue as to whether, but for the
20 provisions of this order the check-the-box payments would be
21 covered. It may be something that GM would be able to convince
22 me otherwise about, but for purposes of this hearing I'll
23 accept that fact.

24 MS. STEINGART: But in terms of that fact, Your Honor, you
25 know, you said that the debtor asked for expedited

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1 consideration of these kinds of issues. And to the extent that
2 the Court is being asked to construe agreements and hold that
3 substantial claims are covered by those agreements, it seems to
4 me that there should be a better evidentiary record on that.
5 And indeed, on that issue, the burden would clearly be on the
6 debtors, Your Honor. And that's a burden that they're seeking
7 to sidestep by having the Court deem that these claims can be
8 under Master Separation Agreement. The collateral --

9 THE COURT: But I don't think that anyone's asserted that
10 it's just ice in winter. I think they're up front about saying
11 that, in fact, there's a very strong likelihood that it
12 wouldn't be covered.

13 MS. STEINGART: Right and indeed, that that is a fiction,
14 Your Honor. And, to the extent that it's a fiction that
15 creates a mechanism for a pre-petition claim that can't be

16 attacked on a very substantial ground it should not exist, Your
17 Honor, especially because of the second assumption.

18 And the second assumption that pervades the papers of the
19 debtors in that the colloquy that Your Honor had with the
20 committee just makes clear as a fiction that somehow GM is
21 putting in new money. I think that the Court understands, just
22 as all of us understand, and I'll quote from part of the
23 conversation that took place before, that "the crystallization
24 of GM's liability under the GM guaranty will occur in the near
25 term."

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1 And indeed, this agreement today is being made so that GM
2 can reduce and can manage that liability, which, now that
3 Delphi is in bankruptcy, is certainly a substantial liability
4 and is no longer -- is almost no longer contingent because, as
5 this Court is aware, part of that discussion will be definitely
6 embedded in the 1113, 1114 process.

7 So the two fictions, really, that the claim is based on is
8 one, that somehow it arises under the Master Separation
9 Agreement, which we all agree is a fiction. Okay, it's being
10 deemed, we're pretending. And the other thing we're pretending
11 is that somehow there's new money here and if it wasn't on this
12 fiction, there would be an administrative claim. I think that
13 there would have to be substantial proof, Your Honor, before
14 this Court can make a holding, before this Court could find as
15 a matter of fact and as a matter of law that what GM is putting
16 in, is new money. There's certainly been no proof with respect
17 to that and there's been no proof that the real liability here
18 that GM is dealing with is its own.

19 And the only issue this raises, Your Honor, is the claim.
20 The only issue that we care about is being able to question the

21 claim. Now there are two things that Mr. Butler says about
22 that: well, this is a consensual process and when I have these
23 folks on one side of the table then these folks sneak out and
24 oh my gosh, oh my gosh -- what a parade of horrors this is.
25 But, Your Honor, it's not a parade of horrors. If Mr. Butler

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1 says it's premature to delegate claims pursuit to the
2 committees -- to the committee or the committees because
3 certainly we will be asking for standing to pursue claims on
4 behalf of the debtor against GM -- it's premature to delegate,
5 it's premature to investigate, it's premature to bring claims
6 on behalf of the debtor against GM. Indeed, this has to be
7 part of the consensual process; it has to be part of the
8 discussion. Then you can't take a piece of the discussion
9 away. And the fact that this program is dealing with part of
10 GM's liabilities and GM's actions in connection with the spin-
11 off and thereafter; you can't remove this piece and then say,
12 well, the rest of it has to be consensual. The only issue
13 here --

14 THE COURT: Well, they're not saying that the rest of it
15 has to be consensual -- I mean they're doing something that the
16 unions, you know, said I shouldn't even start on, which is
17 totally unconsensual, which is the 1113 motion. I mean,
18 there's always been a backdrop here of a nonconsensual
19 alternative.

20 MS. STEINGART: But Your Honor, we all want it to be
21 consensual. Don't get me wrong. What we're saying here is
22 that GM should not be given a kind of claim as a result of
23 resolving this piece that is not open to being questioned on
24 all grounds that should otherwise be available. And that it
25 should not be shielded by deeming it to occur under the Master

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1 Separation Agreement. That really puts all parties in the
2 optimal position to create the consensual arrangement. And you
3 don't have pieces of it leeching out piecemeal in a manner that
4 doesn't take into consideration all of the constituents.

5 THE COURT: Well, but timing is everything, right?

6 MS. STEINGART: Timing is everything. But timing is in
7 control of the people who come here and say it's an emergency,
8 Your Honor. I think that as the Creditors' Committee has made
9 clear, there's no emergency here. The debtor has liquidity to
10 take care of these claims if they want to offer a program. The
11 question is how it gets paid for and who gets the claims and
12 how do those get resolved.

13 THE COURT: I'm sorry, how does it have the liquidity to
14 offer a program dealing with OPEB?

15 MS. STEINGART: Well, because the OPEB liabilities, until
16 the resolution of 1113, 1114, are not immediately accelerated.
17 So it's not as if the OPEB liabilities that exist today make
18 the balance sheet unworkable. That's what the entire process
19 here is about.

20 THE COURT: No, but you see that's why I go back to the
21 point about timing. Ultimately, it seems to me as I listen to
22 you, and having read your papers, is that as a practical matter
23 there's a substantial likelihood that there will be some form
24 of large claim of GM against these estates because of their
25 guaranties.

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1 And there are two issues that are raised by this motion.

2 The first is whether the -- whether there are new benefits to a
3 ôprogram,ö as opposed to what the objectors are proposing, not
4 only with respect to immediate cash savings, but also from the
5 effect that that program has on the remaining negotiations, as
6 opposed to not having a program, an attrition program.

7 And then, secondly whether the prospect of leaving open
8 certain aspects of GM's claim -- really one, which is its
9 ability to assert the claim under the MSA -- outweighs the
10 other benefits. All that I think the objectors are saying to
11 me is postpone it and we'll work it out later, either by
12 litigation or negotiation and we'll do better later vis-a-vis
13 GM than today.

14 But if you look at it in isolation, GM is getting clearly
15 something directly today under this motion, but the debtors are
16 also getting a program that seems to have other benefits.

17 MS. STEINGART: Well, I think, Your Honor, what we're
18 saying is that the benefits that GM is receiving are
19 unjustified -- that they're unjustified because the claims
20 cannot arise under the Master Separation Agreement. They're
21 unjustified because it's not new money. And the other reason
22 that Mr. Butler raised was, somehow the unions can never allow
23 the benefit guaranties to be triggered because somehow the
24 benefit guaranties preclude the unions from negotiating in good
25 faith to -- from bargaining in good faith. Because, you know

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1 if the unions trigger the benefit guaranty -- and I'm just
2 trying to understand the argument that Mr. Butler was making to
3 the Court, Your Honor -- that somehow, if the unions trigger
4 the benefit guaranty by their conduct they don't get to enjoy
5 the fruits of the benefit guaranty.

6 I don't understand the benefit guaranty myself, having

7 looked at it to say that. But, Your Honor, I would say to the
8 extent that the benefit guaranties purport to limit the union's
9 ability to bargain in good faith, that those would be contrary
10 to public policy.

11 The obligation to bargain in good faith is statutory under
12 the National Labor Relations Act and certainly could not be
13 bargained away in some guaranty with GM. So I think that --
14 and that's certainly in none of the papers that Mr. Butler has
15 submitted, it's in none of the affidavits that I've seen. I
16 don't think that anyone would put that in an affidavit that
17 somehow, there is a limitation on the union's ability to
18 bargain because if their bargaining triggers the guaranty that
19 GM wouldn't have to pay on the guaranty. I just -- I thought
20 that that was unexpected and I thought that that needed to be
21 responded to, Your Honor.

22 So, our view, essentially is that the benefit to GM, Your
23 Honor, is unjustified. And while GM should be given a claim --
24 and we have no objection to GM getting a claim -- the ability
25 to object to that claim on all grounds that would be available

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1 to the debtor or otherwise, should be preserved. And modifying
2 the structure of this arrangement to the extent that GM
3 doesn't have a carte blanche to assert claims under the Master
4 Separation Agreement from anyone other than the debtor is not a
5 significant change.

6 THE COURT: I guess what I'm saying is, aren't these same
7 types of issues going to arise, vis-a-vis GM, in any event,
8 down the road?

9 MS. STEINGART: I think that the Creditors' Committee
10 having looked at the record -- we weren't appointed at that
11 time, Your Honor. And having looked at the record that was

12 made during the argument and order in connection with the last
13 attrition motion, it's my understanding that the Creditors'
14 Committee has preserved the rights of all parties to object on
15 all grounds to claims that have been given. To the extent that
16 these three other agreements: the Master Separation, Employee
17 Benefit and Indemnity, remain issues there, you know, there are
18 grounds to challenge those.

19 But I think that in each of these situations, Your Honor,
20 there is -- the calculus has to be made about what GM's
21 exposure is, what benefit GM is gaining, and whether what
22 they're getting from Delphi or from the constituents in this
23 case by limiting their ability to challenge the claims is
24 justified. And here, Your Honor, that balance -- it's a
25 different question each time. It can't always be resolved by

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1 the behemoth moving forward. I think this time that that
2 balance, in terms of the benefit that GM is receiving, that
3 benefit is unjustified, and modifying --

4 THE COURT: Well, that's my question. Why? In light of
5 the fact that, I think, all that you are looking to preserve is
6 the flexibility to raise these same points when you have a
7 negotiation two or three months from now.

8 MS. STEINGART: Because the Master Separation Agreement,
9 Your Honor, in no way provides a conduit for this claim.

10 THE COURT: I guess I'm not being clear. When you have
11 the negotiation two or three months from now and everybody is
12 trying to tap the asset of the benefit guaranty and at the same
13 time trying to limit what GM gets from the estate in return for
14 it, aren't you, in essence, having the same type of negotiation
15 with GM then? Because they have something and you want
16 something at the same -- the same time, I mean --

17 MS. STEINGART: Well, it is the same type of negotiation.
18 But to the extent that the ability to have that negotiation is
19 curtailed by taking away the ability of this side of the table
20 to attack the assertion of those claims under the Master
21 Separation Agreement, then that conversation or that
22 negotiation is changed in a way that isn't warranted at this
23 point.
24 THE COURT: Because?
25 MS. STEINGART: Because there's no evidence at this point

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1 that if you take that aspect of this agreement out of the
2 agreement, that GM won't do it. And the other thing is --
3 THE COURT: And so I think you are, like the Creditors'
4 Committee, asking me to play chicken with GM.
5 MS. STEINGART: Right. Well, and the other aspect of it
6 is that, as the Creditors' Committee said, this program can be
7 pursued and this program can be offered without GM. So GM -
8 -
9 THE COURT: That means that you have a pretty broad
10 definition of the word "program," right?
11 MS. STEINGART: Well, I think that they --
12 THE COURT: There's no "check-the-box."
13 MS. STEINGART: But Your Honor, the check-the-box exists
14 by virtue of the guaranty. That check-the-box is there anyway.
15 It's not something additional that's being provided by virtue
16 of this program. The benefit guaranty is the check-the-box.
17 The unions got the benefit of the guaranty years ago and
18 they've always had the check-the-box. So there's nothing new,
19 from that aspect of it, at this point.
20 THE COURT: Okay.
21 MS. STEINGART: Thank you, Your Honor.

22 MR. KURTZ: Good morning, Your Honor, Glenn Kurtz from
23 White & Case on behalf of the Ad Hoc Committee of Equity
24 Holders. I would like to start by specifically adopting all
25 the positions that you've heard about. There's a lot of paper.

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1 There's been lengthy argument and I don't want to repeat that
2 so I'm going to expressly adopt it, and try to make points that
3 are different, either entirely or at least, slightly.

4 The first point I want to raise, Your Honor, is the
5 standard of review, which is not business judgment or total
6 deference under a business judgment. The debtors have
7 repeatedly relied on the prior order with respect to the
8 attrition program from their preliminary statement through
9 their papers and here in court today. What the debtors have
10 utterly ignored of course is Your Honor's determination with
11 respect to your review of the attrition program and offered no
12 reason why your prior determination doesn't apply here.

13 Page 216 of the transcript from the April 7th hearing,
14 you've identified the review as follows: "It is my practice to
15 give less deference to the debtor's business judgment in those
16 situations and to exercise more of my own in light of the
17 arguments raised by the objectors." And that was, I believe,
18 in response to the presentation we made with respect to the
19 strict scrutiny. We relied then and we rely now on New
20 Hampshire Electric and on CGE, which both specifically said as
21 you get closer to matters that impact the reorganization and
22 have significance that you get heightened scrutiny. I also
23 rely on GM's role in all this. Which I think is as close to
24 being an insider. I think Your Honor rejected that, but I'll
25 raise it for preservation purposes and also our sub rosa plain

1 issue, which I know you have strong feelings against. But in
2 either case, you've already ruled that it should be closer to
3 your judgment and not simply your acceptance of the judgment of
4 the debtors. And it's the same motion, it applies to several
5 issues according to the debtor and so I assume that will be the
6 appropriate standard of review here too.

7 On the first significant piece of the program that we are
8 talking about, which is the buyout component, Your Honor asked,
9 you know, what other options were there? Why was this a good
10 idea? And I did want to offer that. The option is not to
11 provide the buyout payments at all. The debtors -- and I'll
12 get to, I think they're just a benefit to GM, not to the
13 estate -- the debtors proudly announced today, that in
14 connection with the attrition program they had participation
15 rates including some thirteen thousand people. And of those
16 thirteen thousand people only five did not check the box. So,
17 we have a very wholesome record that checking the box is an
18 adequate opportunity.

19 We had Mr. Kennedy stand up and tout the fact that his
20 union will participate to the same extent, perhaps more, in
21 light of their pre-existing contractual arrangement. So why is
22 it, in light of the fact that everybody is checking the box and
23 participating in connection with the first attrition program,
24 do we have to offer some new program, some new component to the
25 program in a supplement?

1 And it seems clear to me that it was for the benefit of
2 GM. And that it is GM that benefits from that and they benefit
3 from it in two ways. The first way they benefit from it is,

4 instead of just paying the OPEB benefits subject to all
5 defenses and the like, they now get 50 percent of that financed
6 by the estate today, because to accept the buyout payments made
7 you give up your rights to OPEB. Those payments are a
8 reasonable approximation of the potential OPEB liabilities
9 going forward, and now 50 percent are assumed by the estate.
10 And the second 50 percent is GM and it's allowed. You're no
11 longer in a position where GM makes a claim subject to all
12 defenses, but is, in fact allowed. So the only real benefit
13 that we can see, with respect to the buyout portion of this is
14 in favor of GM.

15 Having said that we also think, Your Honor there should be
16 a series of clarifications to protect everybody's rights, in
17 the even that any portion of that program, that part of that
18 program is permitted. And they are as follows: first, we
19 would like to be comfortable that all interested parties,
20 including members of the Ad Hoc Committee, preserve all claims
21 against GM. That the allowance of the claim doesn't have any
22 impact on claims that affirmatively can be brought by anybody
23 else.

24 And that, on a related point, nothing in allowing a claim
25 impacts that claim, even if the affirmative claim against GM

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1 would have constituted in whole or in part some defense to the
2 claim that's being allowed, potentially, or at least is being
3 requested to being allowed in this motion.

4 So, by analogy, Your Honor, a compulsory counterclaim of
5 some kind -- if GM's claim is allowed it certainly should not
6 imply that any relevant defenses have been adjudicated in any
7 fashion and are limited in any way in connection with any
8 claims that interested parties, including members of the Ad Hoc

9 Committee, would choose to bring later.

10 THE COURT: I'm trying to think how that comes up, other
11 than -- other than 502(d). My view is that 502(d) is implicit
12 in this since 502(d) talks about disallowing a claim, which
13 includes claims which are already allowed. But I don't
14 understand the other points you're making.

15 MR. KURTZ: My only concern, and it may not be something
16 that I need to be concerned about, but if GM has an allowed
17 claim that relates to an OPEB liability which all relates to
18 fraudulent conveyance actions and the like, I don't want to
19 have to litigate with GM the notion that, in allowing this
20 claim you would necessarily have had to raise certain defenses.
21 And that those defenses --

22 THE COURT: Ordinarily, this wouldn't be res judicata or
23 collateral estoppel in some way.

24 MR. KURTZ: Yeah, collateral estoppel --

25 THE COURT: I don't think that's contemplated by the

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1 parties.

2 MR. KURTZ: Okay.

3 MR. BUTLER: I think that GM, for the record that it's not
4 and I think GM would say it's not. Mr. Kessler?

5 MR. KESSLER: If you're talking about, as Mr. Butler
6 referred before bankruptcy claims, it's not.

7 THE COURT: Well but, I mean but this is a --on the
8 funding the 50 percent, the argument that's been made to me is
9 that this is new money and so I don't see how a new money
10 allowed claim could somehow be res judicata or collateral
11 estoppel in respect of an old money claim.

12 MR. BUTLER: Your Honor, the debtors absolutely concur
13 with that.

14 THE COURT: Okay.

15 MR. BUTLER: The only thing we don't concur with is Mr.
16 Kurtz's statement that it's his litigation or his clients'
17 should advance against General Motors, that's an estate claim,
18 not his client's claim.

19 THE COURT: All right, but everyone's rights are
20 preserved. It seemed to be that the language in the proposed
21 order was consistent with the prior order which says that all,
22 you know, everyone's rights and claims are --

23 MR. BUTLER: Right. Your Honor the -- an appropriate STN
24 or Commodore motion will be made by appropriate parties --

25 THE COURT: Right.

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1 MR. BUTLER: --at the appropriate time. Nobody's
2 suggesting that we are going single handedly to pursue a claim.

3 THE COURT: Okay.

4 MR. BUTLER: On a related matter, Your Honor, I want to
5 also clarify that, if there is an allowance of a claim that
6 that doesn't mean that there's a determination that GM in fact
7 gets a distribution with respect to that claim. But that all
8 rights under 502(d) and 502(j) are preserved --

9 THE COURT: Right.

10 MR. BUTLER: -- so that, and all common law setoffs and
11 the like that, there shouldn't just be a timing matter that
12 when the time comes down the road -- I mean, we're not trying
13 to litigate it today -- the distributions are here, that
14 there's an availability to stop that distribution in light of
15 what might be substantial claims that are being litigated at GM
16 at that time.

17 THE COURT: As I said, I think that 502(d) is not
18 implicated by this because 502(d) talks about the disallowance

19 of a claim. I.e., it presumes that even if you can have an
20 allowed claim, if you don't pay it back (the preference -- or
21 whatever, you know) -- that claim is disallowed. You know
22 502(j) is kind of an amorphous right so, if the basis for
23 reconsideration is that it shouldn't have been allowed then I
24 think you're wrong. But if -- I don't know what else there
25 would be, but --

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1 MR. KURTZ: Well, 502(d) which I understand, Your Honor
2 says is preserved is on -- goes to one issue. 502(j) is a
3 statutory right to seek reconsideration. And I suppose it's
4 either preserved or it's not preserved by reason of this order.
5 We're trying to get some clarification as to whether --

6 THE COURT: Well, what I don't think the parties have
7 agreed upon, and I'll leave it this way, is that somehow, if
8 things don't go the way someone wants in the case, that they
9 can revisit this agreement. I don't think that's contemplated.
10 So, you know, in that sense, it wouldn't be reconsidered. But,
11 but I think now that's - so,

12 MR. KURTZ: There's be no right -- I view it as a --

13 THE COURT: The whole regimen of the Bankruptcy Code,
14 starting with the fact that you don't normally pay unsecured
15 claims except pursuant to a plan, is not somehow vitiated by
16 this, by this motion. On the other hand there shouldn't be an
17 implication that that means that 502(j) can be viewed to get,
18 you know, a whole new look at this and we'd be arguing the same
19 point down the road in light of, you know -- other negotiations
20 with GM.

21 MR. KURTZ: I understand. I suppose your position is that
22 there's a procedural right to seek to have something
23 reconsidered and it may be that Your Honor would not be

24 inclined to reconsider on particular bases, but we would
25 nonetheless have the right to make the statutory request and it

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1 would either be granted or denied based on the facts presented
2 in connection with the request.

3 THE COURT: Okay.

4 MR. KURTZ: On the OPEB piece, I'm going to rely on the
5 arguments of others as to whether GM can, and we think, cannot
6 create some new claim and effect a waiver of everyone's rights.
7 It was in the papers but I do want to highlight for Your Honor
8 the FCX decision which permitted the debtors to waive their
9 rights but did not allow them to waive the rights of the other
10 interested parties, including creditors. We think it's a
11 better course to preserve those rights as they're contemplated
12 at law.

13 I wasn't planning to make a comment, but in light of the
14 Creditors' Committee's comments about what that OPEB liability
15 could look like. I do want to comment that our view is, that
16 whatever claim that could be brought, either by contract,
17 common law or otherwise would only be to the extent that valued
18 the estate. It was estate's value. And that we believe that
19 the -- to the extent that we're ever in a position where GM is
20 paying OPEB benefits that we have an obligation to make those
21 payments or provide those benefits subject to rejection of the
22 CBAs, I suppose, up until expiration of the CBAs in October of
23 2007.

24 And so the value of the benefits that are being provided
25 between the trigger date and/or the agreement date. And

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1 October 2007 may or may not constitute a claim by GM but
2 certainly GM is not bringing any new value to the estate for
3 which it could seek a claim based on the present value of the
4 actuarially determined claims, perhaps in perpetuity.

5 So I'll want to be certain that nobody's going to claim
6 that we have not preserved that position. We do not think that
7 GM has a claim beyond what the benefits are in actual economic
8 terms from the time they provide them until the expiration of
9 the CBAs, and not as an actuarial determined present valuation
10 of its OPEB benefits into perpetuity or any other future-
11 looking period.

12 THE COURT: Okay.

13 MR. KURTZ: And on that front, I did want to note that the
14 idea that GM is adding some sort of new value because they have
15 no obligation existing to provide a check-the-box, I think is,
16 you know, maybe hyper-technically accurate, but I think it's
17 substantively inaccurate.

18 There is an existing obligation to pay those OPEB benefits
19 subject to a trigger. And the debtors have filed the motion
20 for that trigger. That's actually sort of the Alice-in-
21 Wonderland tea party that I've been invited to. The one where
22 GM has no obligation to pay OPEBs but that happens during the
23 course of a motion that is being prosecuted under 1113 to
24 trigger GM's OPEB obligation.

25 So I would suggest that if the debtors that don't have it

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1 both ways then they can seek to trigger the OPEB liabilities
2 and then come here on the attrition motion and say, well,
3 there's never going to be a trigger of the OPEB liability so
4 GM's actually giving us something new and different.

5 THE COURT: Well, I, well --if there's some -- what I was
6 suggesting that, it seemed to me, was new was simply the
7 timing, as opposed to the trigger.

8 MR. KURTZ: The timing is new but then I think Your Honor
9 has to evaluate the value of having a trigger maybe thirty or
10 sixty or ninety days from now compared to what the trigger
11 would be at the completion of the 1113 motion, depending upon
12 how it gets disposed of by Your Honor.

13 The final point I want to raise is, there was a footnote,
14 I think footnote 9 in the reply and I thought I heard it
15 repeated again today about the notion that GM will try to take
16 credit in some global resolution, which, hopefully all parties
17 will be involved in and it won't be just sort of forced in a
18 motion down our throats here, that they will seek credit for
19 the thirty-five thousand.

20 Now, the attrition program is clear as can be, and we have
21 the testimony and there is an order. And we got all
22 clarifications, including from GM, that that thirty-five
23 thousand dollars would be provided without any right of claim
24 and we're a little troubled.

25 And, Your Honor, by the way asked the question of Mr.

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1 Sheehan, is there anyway that this program modifies the old
2 program and the answer was no. And I'm a little troubled by
3 the notion that, although they don't have a claim for the
4 thirty-five thousand per employee that they are going to seek
5 credit in some global settlement.

6 And it's troublesome, one because I think it runs contrary
7 to the way that the program was described and so ordered, and
8 two, I also find it a little unusual that it is the debtors
9 that put in their papers that GM may seek credit for something

10 that GM has no legal right to seek credit for and that that's
11 going to constitute some form of consideration.

12 It's all part of our problem with who is leading the
13 charge against GM and will ultimately be relevant to an STM
14 Commodore motion or at least a new issue about at least
15 defensively being able to prosecute issues with respect to GM.

16 THE COURT: Okay.

17 MR. KURTZ: Thank you, Your Honor.

18 MR. FOX: Good afternoon, Your Honor, Edward Fox from
19 Kirkpatrick & Lockhart, Nicholson, Graham, LLP on behalf of
20 Wilmington Trust Company as indentured trustee. Your Honor at
21 the outset I'd also like to join in the objections of the
22 previous objectors -- the Committee, Equity Committee and, dare
23 I say it Appaloosa as well. And I also want to make sure, as
24 we specified in our papers, that we incorporate our arguments
25 from the previous attrition hearing on April 7th, because I

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1 think they're applicable here as well.

2 The only point I make in terms of concurring with the
3 Creditors' Committee objection is that we have a difference of
4 view with respect to a point made in footnote 11 of the
5 Creditors' Committee objection, so I'll leave that aside.

6 THE COURT: What is that?

7 MR. FOX: It goes to the issue of who's the party to the
8 collective bargaining agreement and where the claims lie.

9 THE COURT: Okay.

10 MR. FOX: We've been through the structure issues before,
11 so I don't want to belabor that and the issues of Delphi
12 Corporation being the party against whom the claims are being
13 asserted by General Motors and, in this case, being the party
14 that's actually laying out the debtor's share of the cost of

15 funding the current attrition program.

16 Whereas Delphi Automotive Systems LLC, the operating
17 subsidiary, which is also a debtor, is the party which -- on a
18 daily basis is employing the unionized employees, is paying
19 their wages, is paying for the jobs bank if they're not
20 actively working and will be the beneficiary of the reduced
21 wage rates and reduced payments to jobs bank employees, which
22 will presumably result, if these attrition programs are
23 successful. The --

24 THE COURT: Who's the sponsor of the various benefit
25 plans?

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1 MR. FOX: I don't know that I've seen that documentation.
2 And I -- but I believe that the funding, at least initially. is
3 coming from DAS, LLC, unless there's something in the record
4 that suggests otherwise, that I haven't seen.

5 THE COURT: Uh-huh.

6 MR. FOX: The, you know, debtors assert and particularly
7 Mr. Sheehan's motion and in Mr. Sheehan's declaration that the
8 attrition program will result in lower operating costs. Those
9 are lower operating costs for DAS, LLC. While he concedes that
10 it will result in higher pension funding contributions which,
11 if not paid are presumably jointly and severally liable under
12 ERISA.

13 The -- part of the problem we have with this is that the
14 debtors have not analyzed the effect of this motion on an
15 entity-by-entity basis. And we continue to believe that the
16 Court's obligation is to do exactly that. Now, we've designated
17 portions of Mr. David Resnick's testimony on exactly this point
18 and specifically asked him in his deposition yesterday, this
19 question: "Have you made any attempt to evaluate the cost and

20 benefits of these programs on a debtor-by-debtor basis?"

21 And the answer was "no." And asked if he was aware if
22 anybody else at Delphi had undertaken such an analysis and
23 again, his answer was he was not aware. And he further
24 indicated that, in his analysis, they're looking at these
25 programs on a consolidated basis rather on an entity-by-entity

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1 basis.

2 And he was asked a question: "Do you assume that Delphi
3 Corporation's interests -- Delphi Corporation the legal
4 entity's interests are identical to those of Delphi Automotive
5 Systems, LLC with respect to these attrition programs?" His
6 answer was: "the way we, at Rothschild, have been looking at
7 these programs are really regarding Delphi broadly, generically
8 speaking and not by any specific legal entity." And he goes on
9 with more of the same. And I'll just finish it up. The
10 question was, "so in other words, you're just -- I don't mean
11 to belabor the point but you're regarding all forty entities as
12 if they were a common pot, is that correct?" The Answer:
13 "yes." Question: "So any benefits go into the common pot and
14 any detriments come out of the pot, but you haven't focused any
15 attention on how they're allocated among the legal entities
16 that comprise the collective group we're calling the debtors?"
17 Answer: "Correct."

18 And that's problematic. Because if the debtors haven't
19 done that, then I don't know how they satisfy their business
20 judgment and I don't know how the Court can then make a
21 determination as to whether they've properly followed their
22 business -- exercised their business judgment in analyzing this
23 on an entity-by-entity basis. I want to address a couple of
24 points.

25 THE COURT: Well, can I, can I stop you there for a

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1 second?

2 MR. FOX: Sure.

3 THE COURT: Given the express reservation of each debtor's
4 rights against the other debtors, and I guess the further fact
5 that at least in respect of the OPEB check-the-box portion of
6 this program, the agreement that GM can assert its claim under,
7 even though it's only asserting it against Delphi Corp, is one
8 where there is joint-and-several liability?

9 MR. FOX: Well, let me address that specific point first,
10 and then I'll answer your question more broadly. Because I
11 know you made a comment when Mr. Seider was speaking. The
12 Master Separation Agreement does have four Delphi entities, but
13 the order -- and it's paragraph 8, I believe, of the proposed
14 form of order -- specifically provides that that claim that GM
15 is going to assert pursuant to the Master Separation Agreement
16 is only against Delphi Corporation.

17 THE COURT: No, I understand that. But given that the
18 agreement provides for joint-and-several liability, wouldn't
19 that further bolster Delphi Corp's claim for contribution over
20 against DAS or any other debtor?

21 MR. FOX: You mean pursuant to the terms of the Master
22 Separation Agreement?

23 THE COURT: Yeah.

24 MR. FOX: Well, --

25 THE COURT: I agree that it's clear under this motion, if

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1 it were granted, that GM would only have a claim against Delphi

2 Corp. But given the terms of that agreement, it would seem to
3 bolster, if you needed to bolster it at all, the argument,
4 which is already preserved, based on the rights of each debtor
5 to go against the other debtors, that Delphi Corporation would
6 have a contribution claim against the other entities.

7 MR. FOX: Well, I think the problem with that is that,
8 using the Master Separation Agreement as a basis, all of the
9 objectors, Wilmington Trust included, do not believe that GM
10 would be authorized but for Your Honor's approval, that the -
11 -.

12 THE COURT: I know. But I'm just talking about the inter-
13 debtor issue.

14 MR. FOX: Well, but it relates to that. Because if I were
15 representing one of the other debtors and Delphi corporation
16 came along and said, well, I made this payment under the Master
17 Separation Agreement and therefore, I can now seek contribution
18 from you as another party to the Master Separation Agreement,
19 my response would be, you didn't have a right or an obligation
20 under this agreement to make that payment. It was only because
21 a court order said that you can pretend, or deem it to be an
22 obligation under that as a way, as Mr. Butler says, to channel
23 the claim or to create a claim that otherwise doesn't exist,
24 that they could make that argument. So I think that --

25 THE COURT: Well, I don't know. I imagine you would be

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1 taking the opposite side down the road on that one. But in any
2 event, my question really went to this point: given that all
3 of those issues are preserved by the express language of the
4 proposed order, it seems to me that your point, you know, only
5 arises if two things are the case. One is that Delphi
6 Corporation has a reasonable expectation that it will, as a

7 practical matter, not be able to get the value back that is
8 properly attributable to other entities. And two, that -- and
9 I guess this is related to the first one -- that in essence it
10 should decide to just simply jettison the North American
11 business. Both of which seem to be pretty momentous decisions
12 to make.

13 MR. FOX: Well, there are a couple of issues there. In
14 terms of recovering the value of the claim if the rights are
15 preserved, at a minimum there's certainly no assurance that any
16 claim over by Delphi Corp against DAS, LLC or any of the other
17 debtor entities, is necessarily going to be money good. I
18 mean, we don't know what the recovery rates are going to be at
19 the various creditors at various levels.

20 If it turns out that claims against Delphi Corporation are
21 paying eighty-two cents on the dollar and claims at DAS, LLC
22 are paying thirty-two cents on the dollar, I mean, unless we
23 have an administrative claim or some assurance of that or a
24 priority of some kind, or super priority, that certainly on an
25 unsecured basis there would be no assurance that that claim

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1 would be recovered in full. So there needs to be some way to
2 address that if the order's going to properly address that.

3 Secondly, and I have to concede that I don't have the
4 indenture for the subordinated bonds with me, and I haven't
5 looked at it in a long time, so I don't remember the terms of
6 it. But it may be that GM, by having this claim is going to
7 have a right to share in those subordination rights.

8 THE COURT: That's not what was said earlier, at least, as
9 far as I -- the record reflected.

10 MR. FOX: I don't recall, Your Honor. That would be
11 another concern. And then, in terms of asserting the claim,

12 although the right to assert it is preserved, I have to say
13 that I'm very uncomfortable that that is sufficient. Because
14 the debtor has certainly gone out of its way to, you know,
15 state that Delphi Corporation is certainly responsible for all
16 those obligations but has also gone completely the other way to
17 refuse to concede that DAS, LLC has any liability here. And,
18 at a minimum that they're going to be deemed a joint employer.

19 THE COURT: All right, but that's why you're here, right?

20 MR. FOX: Well --

21 THE COURT: I mean there are other ways to -- if you agree
22 that the debtor is not acting appropriately in respect to those
23 claims there are other avenues to take on that.

24 MR. FOX: Well, and I appreciate that comment, and we'll
25 take that to heart, but --

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1 THE COURT: The entity is not just a claim payor. The
2 entity is a subsidiary, and generally speaking, for example,
3 with investments by a parent in a subsidiary, unless the
4 subsidiary is woefully insolvent and should literally go out of
5 business they are not -- you know, they're viewed as for fair
6 consideration. So I guess, ultimately when you balance those
7 two factors, unless there's, you know, on this record it seems
8 to me that it's hard for me to say that the reservation of
9 rights isn't sufficient.

10 MR. FOX: But it's only fair consideration if it's a
11 solvent subsidiary. If they're putting --

12 THE COURT: Well, I don't think that's right. I think it
13 has to be really sick for it not to be solvent -- not to be
14 fair consideration.

15 MR. FOX: What?

16 THE COURT: No, we're talking about fraudulent transfer

17 law. But, generally speaking, to have an operating subsidiary
18 is viewed as a good thing. And even if it -- at the very
19 moment you're talking about it, it may be somewhat insolvent,
20 the fact that it's there and is continuing to operate and you
21 believe, as a parent, that it has liabilities, you know, that's
22 value.

23 MR. FOX: Look, if at the end of the day as part of a
24 plan, I mean, I believe -- I assume that the debtors are going
25 to one of two things to hang on to the subsidiaries. One is

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1 going to be that they're going to do some sort of substantive
2 consolidation so that the creditors of the subsidiaries become
3 creditors of the parent, so that the parent can keep the subs.
4 Alternatively they would have the creditors of the subsidiaries
5 contribute back to the parent their interest in the subs, in
6 return for claims against the parent or stock in the parent, so
7 that the parent can keep the sub.

8 But otherwise, if you didn't do one of those two things,
9 the subsidiaries, unless they're solvent, are going to become
10 the property of the creditors of those subsidiaries and they
11 would not remain the property of the parent. So to invest
12 money in a subsidiary on this basis, to try to -- not to keep
13 it going today or tomorrow, because tomorrow, if this attrition
14 program is not approved, DAS, LLC will still -- at least
15 tomorrow and for the foreseeable future -- be paying the wages
16 of these employees that show up everyday. But there's no value
17 for Delphi Corporation in that subsidiary. So I can't
18 necessarily subscribe to that point.

19 THE COURT: Well it seems to me -- unless you're saying--
20 and I certainly don't see in Wilmington Trust's papers, or in
21 what's been represented as a factual matter, that Delphi should

22 be shutting down the North American business, it seems to me
23 that the reservation of rights is sufficient.

24 MR. FOX: Well, I'm not sure. And I think we indicated at
25 the last hearing in April on this point, that there was some

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1 question about whether the --

2 THE COURT: Well, I understand that some question about
3 not being sure, and the like doesn't on this type of motion
4 really doesn't carry the day. That's the only point I'm
5 making.

6 MR. FOX: Well, at some point, though, if you properly add
7 up the costs and the benefits of the particular entities, which
8 hasn't been done here, then at some point you'd say, gee, are
9 we really going to wind up with subsidiaries that are worth
10 what it is we're putting into them? And particularly when
11 you're paring down the subsidiaries, as Mr. Sheehan testified
12 at the 1113 hearing, I believe it was, so at the end of the
13 transformation, if they go through with it as they indicated in
14 their -- I think it's their March 31 press release, they'll be
15 left with seven plants with four billion dollars worth of
16 revenues and, you know, with a 5 or 6 percent profit margin
17 they'll have about a quarter of a million dollars worth of
18 operating income. It's not clear that, you know, that all the
19 money that's being expended to preserve that necessarily -- and
20 all the risk that's being incurred, particularly in the 1113
21 process, necessarily makes it worthwhile not to just do a
22 phased shutdown and get to September of 2007.

23 THE COURT: Well, I understand that. And that's a live
24 issue. But based on this record I'm just not -- it just
25 doesn't seem to me that that is established.

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1 MR. FOX: Well, I understand that. But I guess I just
2 point out it becomes the debtors' burden to -- certainly in the
3 first instance -- and without the debtor-by-debtor analysis,
4 I'm not sure that they can establish that.

5 THE COURT: Okay.

6 MR. FOX: If I could, I'd just like to address a couple of
7 points that the debtors raised in their reply, although I think
8 Your Honor basically disposed of them previously. Just for
9 purposes of the record, if you'd indulge me a moment. The
10 debtor did make the argument that Wilmington Trust is, you
11 know, objecting without being at the direction of the bond
12 holders. Clearly, I think as you understand under 1109, the
13 Wilmington Trust is a statutory party-in-interest and, quite
14 frankly, it would gut the protections afforded bond holders by
15 the Trust Indenture Act of 1939 if the Court was only willing
16 to hear indentured trustees if they're acting at the direction
17 of bond holders under the terms of an indenture. That's just -
18 -

19 THE COURT: I mean, I don't know what the debenture says.
20 So maybe the bond owners have a beef with Wilmington Trust, but
21 that's a separate issue, and I don't -- that's not in front of
22 me --

23 MR. FOX: Thank you, Your Honor. And the other point that
24 Mr. Butler has made in terms of reliance, or that bond holders
25 knew or should have known of the existence of the collective

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1 bargaining agreements based on the information in the
2 prospectuses. If you look at those prospectuses, although they

3 do reflect the fact that the Delphi Corporation is a party to a
4 collective bargaining agreement, there's certainly no
5 discussion in there about the legal ramifications of that issue
6 here. There's certainly nothing in there that says you can
7 never assert claims with respect to DAS, LLC or that they
8 wouldn't be, at a minimum, a joint employer.

9 And when you look at those agreements, too, you have to be
10 very careful because they switch back and forth between talking
11 about Delphi Corporation on an individual basis, and Delphi, or
12 Delphi Corporation, in effect, on a consolidated basis, because
13 the financials were on a consolidated basis. So any notion of
14 reliance really isn't relevant in this situation, we don't
15 believe as a matter of law anyway. But I don't think you can
16 really prove reliance there.

17 And finally, Your Honor, I just make a point. The UAW
18 supplement, the agreement itself, affirms the prior program,
19 which would be the program approved on April 7th. And I just
20 want to be clear that the order should not be viewed as
21 confirming the Court's prior order or the prior program but
22 only this program. So that there's not an effort here to have
23 this order go back and --

24 THE COURT: That's correct.

25 MR. FOX: -- and sort of retroactively --

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1 THE COURT: I would never -- there's no such creature.

2 MR. FOX: No, I believe that's right, but --

3 THE COURT: Okay.

4 MR. FOX: -- I want there to be an interpretation to that
5 effect.

6 THE COURT: Okay.

7 MR. FOX: Thank you, Your Honor.

8 THE COURT: Okay. Do you know who the sponsor of the
9 benefits plan is?

10 MR. BUTLER: I do, Your Honor. It's Delphi Corporation.
11 Mr. Fox, if he remembers all of the exhibits he has from the
12 1113, 1114 proceedings in which he's the principal objector --
13 one of the principal objectors, Wilmington's Trust --

14 THE COURT: Well I wouldn't say he's the principal
15 objector, but he's an objector, yes.

16 MR. BUTLER: And those would go, Your Honor -- those would
17 include the 2003 UAW, IUE, USW National Agreements and Master
18 Agreements and the Supplemental Agreements on the hourly-rated
19 employee pension plan, hourly health care plan, which is OPEB,
20 supplemental unemployment benefit plan, hourly life insurance
21 plan, hourly sickness account and accident plan, the guaranteed
22 income stream plan and so on and so forth. All of those are
23 exhibits in the record on that disk. The disks that were
24 submitted in 1113 and 1114 are in evidence there. We didn't
25 feel we needed to put all that in evidence here, but given Mr.

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1 Fox's statements we'd ask Your Honor to incorporate those
2 exhibits by reference into this hearing record. They've
3 already been admitted in the 1113, 1114, if we could, Your
4 Honor.

5 THE COURT: They've been admitted?

6 MR. BUTLER: Yes.

7 THE COURT: That's fine.

8 MR. BUTLER: I believe they've been submit-- Mr. Fox, do
9 you have an objection to that?

10 MR. FOX: No.

11 THE COURT: Could I go then, to one of the points Mr.
12 Kurtz made, which is, because there really wasn't much

13 discussion about this until he made the point, which is: why
14 even do the buyout? What are the specific benefits of the
15 buyout -- I guess more particularly there is the concern that,
16 I guess is implicit in his statement, that the folks who have
17 already signed up will switch to do the buyout, as opposed to
18 what they've already agreed to.

19 MR. BUTLER: Right. I did have in my notes, Your Honor,
20 Mr. Kurtz was the only one of the -- representing the only
21 objector who actually said we shouldn't do something as it
22 relates to the benefit program. And the buyout program, let's
23 just take it from the UAW supplement. I think I indicated to
24 the Court in my opening statements or certainly in the response
25 after the opposed evidentiary record. I represented to the

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1 Court; there are approximately, 86,000 UAW workers who have not
2 participated in the attrition program to date. And, I believe,
3 both Ms. Ceccotti and I talked about the fact that those
4 employees need to have options to determine their fate. That
5 represents about a little more than a third of the total
6 employees -- UAW represented employees at the company. And we
7 believe that some of the -- you know, we believe that some of
8 those will be addressed, ultimately, in the flow back
9 arrangements and that a significant number of them can be
10 addressed in the buyout.

11 THE COURT: Well, do the -- do the estimates for the
12 buyout for both the UAW and the -- seventy-five million for the
13 debtors on the UAW and sixty million for the IUE -- do those
14 estimates include people who would otherwise be doing the
15 check-the-box approach, or is it really separate?

16 MR. KESSLER: They are different people -- well, there's
17 only a slight overlap of people, Your Honor.

18 THE COURT: That's --

19 MR. KESSLER: The buyout attracts people, for the most
20 part, who don't qualify for the other options. There is some
21 overlap, but not much.

22 THE COURT: Okay.

23 MR. BUTLER: Mr. Kennedy wants to take a shot at that.

24 THE COURT: Okay.

25 MR. KENNEDY: For the IUE-CWA lacking the opportunity to

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1 flow back to GM plants has more than 60 percent of its
2 membership that would not be entitled to any other option,
3 other than the buyouts. There is no overlap between people who
4 will be able to or intelligently wouldn't take a buyout because
5 the retirement opportunities are limited to those with thirty
6 years or more, who get the 35,000, or have twenty-six years or
7 more who get a subsidized payment for four years up until
8 they've achieved thirty years of service. Or, have fifty years
9 of age and more than ten years of service. Because, in the IUE
10 plants we have permitted other buyout opportunities and early
11 retirement opportunities to go on, the profile of our
12 membership is one in which we have a substantially younger
13 membership and membership with fewer years of service. So that
14 to enable any significant reduction in headcount, at least in
15 the IUE-CWA plants, there has to be a buyout opportunity and
16 for it to be an intelligent choice for our membership it has to
17 be at the economic range that it has currently established. So
18 I understand Mr. Kurtz raises the question, but to the extent
19 he was anticipating that this was some extra or additional
20 benefit giving -- being given to people, he is wrong. We would
21 not have a deal today were it not for the existence of those
22 buyout opportunities.

23 THE COURT: Okay.

24 MR. BUTLER: The other point I'll make, Your Honor, I

25 mean, and this would have come into the record had Mr. Kurtz

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1 chosen to cross examine Mr. Butler on these issues, and one of
2 the elements we have of today's hearing is that, I think, it's
3 more noticed, that the evidence in here, which is in the form
4 of declarations largely, is uncontroverted. Nobody else put
5 any evidence in, nobody essentially cross examined any of our
6 witnesses and the evidence is uncontroverted. And then you get
7 up and argue it and say well, gee, maybe this program isn't
8 needed for the following reasons. Had that been asked of Mr.
9 Butler, and he's here, he would have pointed out that the
10 experience that labor bargainers have in this, is at a very
11 small percentage of people. Something under 1 percent, ever
12 implicated in -- to the extent they could change their minds --
13 and changing their minds. And that when -- and that our
14 experience at Delphi has been, that once these buyouts were
15 actually announced it accelerated people accepting the other
16 aspects in the attrition program. So we don't -- we don't
17 think, Your Honor, it's going to have the view, and Mr. Butler
18 can provide any answer -- answer those questions directly if
19 you want him to.

20 THE COURT: Okay.

21 MR. BUTLER: Your Honor, with respect to the -- I just
22 want to cover a couple of points that each of the objectors
23 made and I'm going to -- if it's all right with Your Honor, I'm
24 going to start with -- and go backwards. Note to start with
25 Mr. Fox first and Wilmington Trust, and work backwards. One

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1 thing I noted in the evidentiary record, and we'll submit the
2 corrected exhibits to make this, Your Honor, apparently the
3 copying effort in preparing for this hearing the offering
4 memoranda are -- you have the even pages but not the odd pages,
5 and we'd like you to have all the pages for the record, here
6 particularly in the event there's an appeal taken. So, Your
7 Honor, we'll submit corrected exhibits if we may.

8 THE COURT: Okay.

9 MR. BUTLER: The only issue that, I think, I wanted to --
10 I believe Your Honor dealt with the reservation of rights here.
11 And clearly, I think, the Court has it exactly right that, from
12 the perspective of the debtors, which is that, you know, we
13 have put in the preservation of rights to preserve claims over
14 against the subsidiaries. Where Wilmington Trust and the
15 debtors' part company has been the continued position of
16 Wilmington trust modified, a little bit, in their supplemental
17 objection for the first time. The Delphi Corporation itself
18 has no liability whatsoever. And there seems to have at least
19 some concession, reading the first few paragraphs of their
20 supplemental objection, that Wilmington Trust now, apparently,
21 begins to concede that Delphi Corporation itself may, in fact,
22 have liability here. We agree that the issue is open and we
23 preserved it with respect to whether there are any claims over
24 or not. But the factual record here is, all of these programs,
25 be it health care or pension, or collective bargaining

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1 agreements, all of these programs are with Delphi Corporation.
2 The prospectus is that we're out there in which the bondholders
3 bought, simply from the standpoint of disclosure purposes, made
4 it very clear that, as risk factors, you read to the risk

5 factors they come back in capital letters that investment in
6 Delphi Corporation is; beware of, be concerned about,
7 understand that it's -- your investment is subject to all these
8 labor issues, from work stoppages to the terms of a collective
9 bargaining agreement to OPEB, is discussed, all these things
10 are in the risk factors. And we just simply, you know, we
11 respect and understand the claims reservation issue. We are
12 simply, from our perspective, the reason we've reacted so
13 strongly on the point to say Delphi Corporation itself has no
14 primary responsibility here, we think is plainly not supported
15 by anything. That's been our point with respect to Wilmington
16 Trust.

17 With respect to both of the comments made by both the
18 equity committee and by the Appaloosa led ad hoc group, let me
19 just briefly first deal with the equity committees' statements.
20 They say there are two fictions, one that the MSA is the
21 appropriate claims channel. And two, that there is any new
22 money being contributed from General Motors in this. And Your
23 Honor responded with exactly what the debtors -- the Court said
24 it was concerned or what it would weigh is exactly what the
25 debtor's weighed. It's the precise point, which is, the Court

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1 needed to weigh the scope waiver under the MSA, arguing that's
2 the scope waiver given the uncertainty surrounding that,
3 against the benefits of this entire program. That's precisely
4 one of the calculations the debtors came up to. And we believe
5 that the scope waiver issue, particularly requiring General
6 Motors to otherwise navigate through the MSA, was much better
7 than simply giving them their own separate claims channel. We
8 could have signed the agreement General Motors wanted. We
9 could have come here with check-the-box and said, here's a new

10 check-the-box agreement. The equity committee, Ms. Steinberg
11 said, you know, she said, "we have no objection to them having
12 a claim," we just don't want it under the MSA. Well, we could
13 have done that. We could have come to the Court and said here,
14 they -- General Motor -- in fact, that's what they wanted.
15 Here, you could have a claim for this, of check-the-box, and,
16 you know, the only issue will be how people want to litigate
17 the issue associated with that claim. And then there wouldn't
18 be any scope waiver, they would have the claim -- a separate
19 claims channel. We wanted them, for a whole host of strategic
20 reasons, we wanted them to be required because we think it's in
21 the best interest of the estate, to have to navigate through
22 the MSA obstacles in order to be able to assert that. We
23 think, at the end of the day that is more likely to result in a
24 compromise acceptable to the estate. And we think, ultimately,
25 to all of the -- to the Court, if not to every single

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1 stakeholder, then if we simply had given them a separate new
2 claims channel for that purpose. And so, as to the other
3 issue, as to the fiction of them putting new money in, I think,
4 with respect to the monies putting in, I think Your Honor
5 understands, under the attrition payments -- incentives, they
6 are putting in this additional fifty-six million dollars. To
7 Mr. Kurtz's point about whether or not we should be disclosing
8 in our papers the fact that General Motors has told us that
9 they're going to want to, somehow, take account of that in an
10 ultimate consensual settlement, we actually think disclosure is
11 a good thing. We wanted the Court and everyone else to know
12 that that's what they'd said. Doesn't mean they are going to
13 get it. But it's hard to, you know, change someone's view.
14 Unless someone comes to a table to negotiate, it's hard for

15 them to argue that they are going say, I'm going to comprehend
16 all the value against all of the responsibilities in coming to
17 an ultimate comprehensive settlement. And the 120 million
18 dollars number on buyouts that they would participate in, pay
19 half of, that's real money. That is new money. And we think
20 Your Honor got the analysis exactly right again, which is,
21 should the estate go out and borrow it under the DIP or should
22 the estate be able to put some of that off on a claim that
23 later may not have a full one hundred cent payout on it. And
24 so the number was -- the question is, the delta between the
25 two, is that better than paying the absolute dollar value. We

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1 really did view it as an economic assessment. Earlier, when we
2 started this hearing, Your Honor indicated that the Court
3 wanted to delve into an exam on the thought process of the
4 debtors. And that's exactly what we looked at. Ballots were
5 important, how do you fund them? We thought, if you will, the
6 arbitrage on the claims issue was a much better approach for
7 the debtors than simply using up all liquidity. The issue that
8 kind of confused me with Mr. Kurtz's comments, even Mr.
9 Seider's comments on behalf of the creditors' committee is that
10 they all -- they want us to do the labor transformation but it
11 seems to me that each of them doesn't want us to do check-the-
12 box. I mean, they sort of said it both ways. But they said
13 don't do check-the-box. And ultimately, and I think Mr.
14 Kennedy's indicated it for the IUE -- I think our declarations
15 made it clear but the check-the-box, having that ability to do
16 that is extremely important to our labor transformation
17 process. And just to be clear, check-the-box and the
18 ramifications of that in terms of what happens to employee, is
19 different than whether the employee -- whether the benefit

20 guaranty ever, ultimately, is triggered. I agree with Your
21 Honor, at some point either consensually or not consensually,
22 the debtors absolutely believe that that issue will be
23 crystallized prior to a plan of reorganization being confirmed
24 in this case. That has been our operating assumption. So
25 the -- and the only other point I think I wanted to make, Your

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1 Honor, with respect to the creditors committee's comments was
2 simply -- their argument, I think, takes the claims argument,
3 sort of, in isolation and it doesn't balance it against the
4 benefits in the entire program. And it assumed, from an
5 operation perspective, that all of the claims were allowed. I
6 mean, ultimately, they talked in terms of these half a billion
7 dollar claims as if they were really allowed and real claims
8 and would be -- and then they were talking about, well they
9 sold them off to a claims purchaser, what the value of that
10 would be and so forth. And I had to tell you, from the
11 debtor's perspective, we think there is a significant set of
12 obstacles that General Motors is going to have to navigate,
13 including with the debtor's, just to clear, before they're
14 going to get OPEB claims allowed at anywhere near the kinds of
15 values that, I think, General Motors believes they ought to be
16 allowed at. I think they will assert an actuarial balance
17 sheet type of value and that's why we reserved the issue to
18 ourselves and for everybody else on what the real economic
19 value of the claim is. Unless Your Honor has any other
20 questions, I don't have any other comments.

21 THE COURT: Okay. Thank you.

22 MR. KURTZ: Can we have one minute? Your Honor, just a
23 couple of quick responses. Obviously we have no evidentiary
24 factual burden. This is debtor's motion and debtor's burden.

25 The buyout provision is not limited to people who can't

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1 otherwise check-the-box. It would be nice if it was so
2 limited. It extends to everybody, to GM's benefit. Moreover,
3 it's an extra contractual obligation that could have been
4 resolved, and I'm sure, to the utter satisfaction of the unions
5 if they had allowed flow backs, and then, kept GM with an OPEB
6 claim subject to defenses or if they had allowed early
7 retirements in which GM would have taken the OPEB liabilities
8 and accepted the defendants. But instead what they did is they
9 created a program where they would saddle the debtor's with 50
10 percent of the financial obligation associated with the soft
11 landing and allow the other 50 percent in an allowed claim
12 without any defenses. So GM clearly won that point and it
13 benefits GM. It doesn't benefit the debtors or the estate.
14 And the last point, Your Honor, is it just misstates our
15 position to say, we don't like check-the-box or objecting to
16 check-the-box. They can check the box. What we're saying is,
17 that the debtor's cannot waive our existing defenses by
18 creating a fictitious contract claim that we can't defend
19 against.

20 (The Judge's Final Ruling is Attached to the Order at Docket
21 Number 4461)

22 THE COURT: Well, I have a motion in front of me by the
23 debtors in this case for approval of a supplemental special
24 attrition program agreement between themselves, the UAW and GM,
25 as well as an agreement for a special attrition program between

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1 themselves, their second largest union the IUE-CWA and GM. The
2 Court had a lengthy hearing regarding the first agreement
3 between Delphi, the UAW and GM a couple of months ago and
4 approved that agreement. The current supplement is an add-on
5 to that agreement and it doesn't change any of the prior terms
6 of that agreement or the Court's order approving it. But, that
7 prior -- previously approved program is important to understand
8 in the sense that it provides some context for this motion.
9 The other contextual point that is important is to note that
10 between the date that I approved the main special attrition
11 program between the UAW, GM and Delphi and today; the debtor's
12 filed a motion to reject their collective bargaining agreements
13 with, not only the UAW and the IUE-CWA but their three other
14 unions. The Court held several days of trial on that motion
15 and then at the parties request, adjourned the trial to permit
16 further negotiations among the unions and Delphi and GM. In
17 that trial of the 1113, 1114 issues the unions, in particular
18 the UAW strongly asserted that they had been on a path with
19 both Delphi and GM to deal with the union issues prior to
20 (indiscernible due to equipment) 1113 and 1114 motion. Which
21 included, as a critical step, the reduction of the debtor's
22 hourly workforce pursuant to attrition programs. Both that had
23 been negotiated, and further programs with other unions that
24 were under consideration. And that statement was brought out
25 to large measure by the subsequent negotiations of the

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1 supplemental health program with the UAW as well as the program
2 with the IUE and both of which are conforming. The motion has
3 been objected to by the former active non-union parties of
4 interest in this case. The official creditors committee and
5 official equities committee, the indentured trustee have

6 approximately two million dollars of unsecured debt, and the ad
7 hoc had to be equity to fee. Those objections, however in
8 large part, if not exclusively, go to one aspect of the
9 proposed agreements and not to the merits of Delphi's entering
10 into an attrition program with the IUE and supplementing its
11 current attrition program with the UAW. Consequently the
12 evidentiary hearing -- the evidentiary portion of this hearing
13 was much briefer than the earlier hearing.

14 Before I -- well, let me say this first, the object --
15 the primary basis for each of the four objections is, the
16 objectors' view that the proposed agreements unduly benefit GM
17 to the detriment of Delphi. Specifically, each objector
18 contends that in two respects, GM is improperly obtaining
19 preferred different treatment pursuant to the agreements.

20 The first respect is that under the agreement, GM has
21 agreed both with respect to the UAW and the IUE, to pay one
22 half of the proposed actual buyout of those employees who
23 choose to take a buyout. And will, under the agreement,
24 receive an allowed claim, an unsecured claim, against Delphi
25 Corporation with monies actually spent by GM.

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1 Secondly, of each objector points to the provision of the
2 agreement (indiscernible due to equipment) which would deem
3 GM's claim in respect of its assuming liability for OPEB
4 obligations, for those employees who check the box to transfer
5 those obligations to GM. To deem that claim, one that is
6 assertable under the master separation agreement between Delphi
7 and GM entered into in 1998, whether or not, in an actual
8 pattern, such a claim would be asserted under the master
9 separation agreement.

10 Before discussing the merits of those objections as well

11 as the remaining objections by Wilmington Trust and the ad hoc
12 equity committee, I should hope the standard, under which I am
13 reviewing this motion, the motion discounts as a request under
14 section 363(b) of the Bankruptcy Code, which requires that if
15 the debtor uses, sells or leases assets of its estate out of
16 the ordinary course it needs to provide an opportunity for a
17 hearing on notice to the parties in interest. And I believe
18 that this is properly, a motion for sections 363(b) of the
19 Code. In that, among other things, the debtor would be
20 expending approximately 135 million dollars, if its projections
21 are accurate, in respect of the buyout aspect of the program.

22 In addition, I have reviewed the motion under the standard
23 for review of settlements in bankruptcy cases as laid out by
24 the courts, starting with protective committee for independent
25 stockholders of TNT Trailer and Ferrying v. Anderson 390 US

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1 414424, 1968, I do that because there are elements of this
2 proposal which do change the treatment of GM. Which
3 (indiscernible due to equipment) and GM argues to the
4 contrarily affect new undertakings by GM. But not entirely
5 accepting that analysis for the purposes of this hearing, I'm
6 going to apply the settlement standard for those aspects of the
7 settlement. Which happen to be the aspects that the -- those
8 aspects of the agreements -- excuse me, which happen to be
9 those aspects that the objectors primarily oppose. As set
10 forth in TNT Trailer Ferrying and many cases after that,
11 including Bionosphere and Refsom Partners, in considering the
12 settlement in bankruptcy the Court needs to consider the
13 probability of success in litigation, the difficulty in
14 collection, the complexity of the litigation involved, with the
15 underlying issues involved, and the expense and convenience of

16 delay necessarily attending to them. In the interests of
17 creditors and stockholders and the drop or debt. Settlements
18 in bankruptcy are favored, perhaps even more so than in
19 general litigation given the limited resources of most debtors.
20 And it's clear from the case law, as best set out in WT Grant
21 case, that the Court need not conduct any trial or lengthy
22 evidentiary hearing when considering a proposed settlement.
23 And that it should evaluate, I have record and the forwarding
24 factors like that -- and approve it in its discretion under
25 (indiscernible due to equipment)of reasonableness in light of

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1 those factors. With respect to motions under section 363(b)
2 the courts in this circuit require the bankruptcy court to
3 evaluate such motions in the light of its own business
4 judgment, although heavily informed by -- under proper
5 circumstances -- proper exercise of business judgment by the
6 debtor. And by proper exercise I mean the Court's determine,
7 when applying the business judgment rule, whether the debtor
8 has followed proper procedures in evaluating the proposal and
9 whether the proposal is one involving an insider as opposed to
10 arms-length negotiations. And if its arms-length negotiations
11 may include recognition of the fact that one party may all or
12 less leverage than another. As well as, again, the views of
13 third parties, such as an official committee that may have
14 access to nearly as much, if not as much, information as the
15 debtor's decision makers. Particularly if those third parties
16 object to the it being sought. And I've -- as I've said,
17 reviewed this motion in the light of both of the standards.
18 Turning to the objections, it is clear to me from the
19 statements of the objectors with one exception -- the exception
20 I'll deal with later -- that the objectors agree with the

21 debtor. That a (indiscernible) such as that covered by this
22 motion providing for attrition of the debtors' union employees.
23 It is beneficial to the debtor's generally. The record is
24 clear on this point. And I don't want to elaborate on it at
25 length, but I should note that as these debtors have clearly

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1 set forth, and I think its undisputed, the necessity to them of
2 substantially reducing their operations in the United States.
3 Which would involve, in the normal course, a substantial
4 reduction, of course, in hourly and salaried workforce engaged
5 in United States operations. The attrition program already
6 been substantially implemented with GM, has proven to be
7 successful in leading to substantial reductions in debtor's
8 hourly workforce. Wherever those reductions occurred, by and
9 large, at the level of the most highly paid hourly workers
10 thereby, not only reducing the numbers of the debtor's
11 workforce but also disproportionately by worker costs that the
12 debtors face. The reductions also helped the debtors in
13 another respect which is that they have shifted from their
14 books as a principal pattern onto the books of GM a substantial
15 liability for retiree and other OPEB benefits. As it was made
16 clear to me in Mr. Sheehan's testimony, the attrition program
17 does not actually provide for a release of the debtor in
18 respect of OPEB. On the other hand, the OPEB check-the-box
19 mechanism in GM and IUE programs, essentially, transfer
20 seamlessly an employee to GM's benefits package without raising
21 the uncertainties as to when that might otherwise occur in
22 respect of GM's guaranty of benefits to those two unions
23 entered in 1999. Further, the testimony on the record is clear
24 and I include as part of the record, the representations by
25 counsel directly involved in the negotiations such as Mr.

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1 Kennedy and Mr. Butler and GM's counsel, that the existence of
2 an attrition program for the UAW as well as the implementation
3 of an attrition program for the IUE is of very little
4 importance to the debtor's resolving their other issues with
5 the unions in respect of the prevailing wage rates, plant
6 shutdowns, and the like. In that it clarifies the parameters,
7 or size, of the debtor's workforce going forward and means that
8 the parties would be negotiating issues with the proper factual
9 context as opposed to a hypothetical one. As Mr. Kennedy said,
10 there is also a substantial timing element in this last point.
11 The 1113, 1114 hearing was adjourned only till August 11th for
12 various reasons, some of which are quite unfortunate, i.e., the
13 death of the chief negotiator for the IUE. The IUE is a couple
14 of months behind the UAW in having an actual track record of
15 participation in an attrition program. The record is clear,
16 and I think undisputed, that it is very important for the
17 ongoing labor negotiations that actual experience under
18 attrition program for the IUE has promptly, and well before our
19 August 11th, so that the parties can meaningfully negotiate the
20 rest of their labor issues. The contrary is the disapproval of
21 this program, as Mr. Kennedy also represented it and is, as I
22 believe, fully understandable, would be a serious disrupt in
23 the debtor's attempt to resolve its labor issue. So as I
24 noted, the reasons for approving an attrition program like this
25 one, I believe, are clear and largely acknowledged by the

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1 objectors.

2 As I noted, the primary objection raised by the objectors

3 is as to the two aspects of GM's claims resulting from this
4 program. Let me address the buyback point first. Although I
5 should note that these points, to my mind, are not discreet in
6 that this is a comprehensive attrition program. If I were to
7 find fault with one aspect of the program, whether it's the
8 buyback claim or the right of GM to assert a claim under the
9 MSA, I don't have the power to amend the agreement. At best,
10 what would occur would be, a return by the three parties to the
11 bargaining table to renegotiate the agreement.

12 As regards to the buyback point, the agreement provides
13 that GM will have an allowed claim for the actual dollars it
14 spent, in respect of the buyback which would be 50 percent of
15 the buyback amount. It was suggested, somehow, that this claim
16 allowance would violate section 502(e) of the Bankruptcy Code.
17 Mr. Kennedy, at oral argument, raised that point that did the
18 debtors papers adequately address the issue. They claim is
19 only allowed to the extent that GM actually pays out-of-pocket
20 in respect of the buyback.

21 Moreover, the record has made it clear that GM's rights in
22 respect of the amount claimed is different than the creditor.
23 In that they would still be subject to the requirements of
24 confirmation of a plan and payout pursuant to a plan. The
25 disallowance of such a claim on 502(d) of the bankruptcy code,

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1 were GM to be found to have received in full the transfer and
2 not returned that transfer and other provisions of the
3 Bankruptcy Code that apply too, hope to allow claims. And that
4 means the record is clear on the extent of the fourth line.

5 The debtors contend that this is new money and that they
6 would either have to go out-of-pocket themselves with the 50
7 percent that GM is paying. Or along the lines of a third party

8 who would have a, in all likelihood, secured and post-petition
9 priority claim for the amount. And based on that logic, GM's
10 agreement up front, in return for an allowed unsecured claim,
11 is of benefit to the estate. And that is so because the record
12 suggests that, at least as of today, there's no assurance that
13 unsecured creditors, as GM would be under this agreement, would
14 receive a hundred cents on the dollar on their claims. And
15 therefore, the debtor is paying half of the buyout with -- to
16 approve an otherwise small bankruptcy dollars, as opposed to a
17 hundred cent dollars.

18 It is argued, nonetheless, that GM is obtaining for itself
19 an undue benefit through this approach. That is because GM
20 has, as I mentioned earlier, previously guarantied OPEB
21 benefits to the IUE and GM. Pursuant to the buyback
22 consequence of the employees election of the buyback would be
23 elimination of that contingent liability on GM's part. It's --
24 I'm sure this applies to anyone, that GM is not in radiant of
25 this agreement so as to make a gift to Delphi, rather it's

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1 doing it in its own best interest. And I'm sure that the
2 consequence that it considered with this agreement is that it
3 would be relieved of its contingent benefit guaranty liability,
4 in respect of those parties whose buyout is being fund on a
5 fifty-two week basis.

6 But the issue before me is not the benefit that GM
7 receives, whether the debtor is obtaining a reasonable benefit
8 in light of the alternatives available to it. I've spent a
9 considerable amount of this hearing trying to evaluate the
10 alternatives available to the debtor, to the buyout proposal.
11 It seems to me the first one, which is set for the reasons I
12 stated earlier, is not a valid alternative in that its paying

13 with hundred cent dollars -- clearly hundred cent dollars in
14 that instance. As far as I could tell, although the objectors
15 are not particularly clear about this, and in fact, didn't
16 address it at all in their papers, did not just take the view
17 that the debtor's alternative simply not to have a check-the-
18 box section of the program, but rather to offer only the
19 portion of the program that provides for the buyout and the
20 35,000 dollars of payments per person. It's suggested by the
21 objectors that the unions would be as comfortable -- or should
22 be as comfortable with that approach as with the current
23 proposed program. And that the debtors would ultimately
24 obtain, not only the same benefits that is the current program
25 but, in fact, better benefits by applying these agreements.

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1 Certainly the representations by the unions are to the
2 contrary, and I accept those representations based on my review
3 of the GM IUE and GM UAW benefit guaranty. As well as my
4 belief that a clear check-the-box provision is something
5 definitely understandable but inherently more lawful to an
6 hourly employee than reliance upon the benefit guaranty. And
7 therefore, a lot more likely to induce an employee to accept
8 attrition promptly. The objectors contend that Delphi could
9 simply continue to perform its own obligations under the -- its
10 own benefit plans with the unions having the comfort of the
11 backdrop of GM guaranty.

12 I have two issues with that logic. The first is that, as
13 I said before, I don't believe that leads employees to accept
14 attrition now. (Indiscernible) conform to the contrary creates
15 greater uncertainty for them.

16 Secondly, and I believe that ultimately the issues of how
17 and when GMs benefit guaranties would be triggered, will arise

18 in any event, in this case, and lead to some form of liquidated
19 or non-contingent claim by GM. Consequently, I don't believe
20 that one should generally -- what one could generally -- simply
21 put the union problem onto GM now, without some form of
22 inducement to GM in a tangible form.

23 Given that GM is, in fact, going to be going out-of-pocket
24 for up to 50 percent of the buyout clause, it seems to me that
25 the inducement that the debtors have provided for them is

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1 appropriate, which is an unsecured, pre-petition claim subject
2 to the ministrations that I have told you earlier. And that
3 there is no meaningful alternative in them to that process that
4 gets the debtor's the same type of benefit. Clearly, this
5 falls within the range of reasonableness of the settlement, to
6 the extent is a settlement with GM. And also, in my mind, is
7 supported by good business reasons. As with any settlement or
8 any deal, one can imagine different ways that it might be
9 negotiated, but that's not the order of the Court for either of
10 the settlement or business judgment statements.

11 I've already addressed, in some measure, the second issue
12 which is that under the agreements GM is deemed to have an
13 assertive claim under the MSA. This does, clearly, give GM a
14 benefit in return for its acceptance of the check-the-box OPEB
15 transfer. That is because it is further from clear and
16 probably unlikely that without it being deemed to be asserted
17 upon the MSA, GM would have certain claim under the MSA.
18 Moreover, with regard to the UAW -- I'm sorry -- the IUE in
19 contrast to the UAW, there is no separate indemnity agreement
20 whereby Delphi indemnified GM for OPEB performance to the IUE
21 under the GM benefit guaranty.

22 So, absent the deeming of the claim to be assertable under

23 the MSA, that it appears that GM will have to fall back on its
24 rights under common law, separation and retribution, which
25 might be different than under the MSA. That being said, the

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1 benefit to GM is limited in the following respects; first the
2 debtors expressly reserve the right to object to the
3 quantification of such a claim under the MSA, which is a future
4 issue given the different ways that one may quantify the OPEB
5 liabilities. Secondly, except for the right to have the claim
6 be deemed assertable onto the MSA, also parties other than the
7 debtor have the right to object on a basis to such a claim of
8 GM under the MSA. Including, for example, insubordination and
9 brought the transcript objections set up and alike.

10 The question at the end that I have to address, really,
11 and I am going to discuss it in the context of the other issue,
12 is whether this gives debt to GM, it is reasonable and an
13 exercise of good business judgment and an appropriate
14 settlement of potential down the road. Again, I noted earlier
15 the benefits of this type of thing. I failed to mention that
16 one of the benefits is payment or offer to pay up to 35,000
17 dollars per individual by GM, you know, without any agreement
18 by the determined in respect of whether GM has a claim there or
19 not.

20 Secondly, as I said before, today GM has no obligation to
21 accept check-the-box liability for OPEB. It merely has its
22 obligation under the OPEB guaranties. It's argued by the
23 objectors that those are the same -- or tantamount to being the
24 same thing. As I said before, I disagree with that. I believe
25 that the form -- the check-the-box division and concession by

1 GM is substantially more likely to induce hourly workers to
2 accept the attrition program than simply reliance on the
3 benefit guaranty, which does not run into any individual
4 worker. And is, furthermore, tied up in the unpredictable
5 outcome of the pending section 1113 and 1114 litigation.

6 Further, I'm aware that the agreement in respect of the
7 OPEB claim does give GM certain rights, I believe, in
8 protecting either litigation or negotiations following more and
9 extensive of the 1113 litigation. That those issues would not,
10 necessarily, all be decided in the estate's favor and contrary
11 to GM, and that there's a substantial likelihood that the
12 parties in why to disapprove these agreements on this basis,
13 would simply be postponing a negotiation for several months.
14 Not obtaining an ultimate result of dramatically more
15 beneficial to the estate. And of course by postponing the
16 negotiation for more months the result will be, I believe,
17 severely detrimental to the ongoing negotiations specifically
18 between GM, the union and the debtors and essentially deprive
19 the debtors the benefit of the attrition program that's been
20 proposed. So consequently, I'm not prepared to disapprove the
21 agreement on this basis or to play a game of chicken with GM or
22 to suggest that it only made this change I would
23 (indiscernible), in other words, again, while one could posit
24 different ways that this might have been negotiated. The
25 agreement that has resulted is within their business judgment

1 and also within the bounds of reasonableness that have been
2 placed upon them, partial settlement of how GM's OPEB claim
3 with respect to these employees will be treated.

4 If we turn to the other objections briefly, first I'm
5 going to a point actually raised in this objection. This is
6 counsel at oral argument suggested that Appaloosa was
7 nevertheless suggesting that these two agreements constitute
8 (indiscernible) plan reorganization and consequently could not
9 be approved without prior approval of disclosure statement
10 aborting by all parties of interest and confirmation of a plan.
11 I disagree with that analysis and I do not believe that these
12 agreements effect the Chapter 11 plan, in that they do not
13 determine the treatment of creditors but rather deal with a
14 settlement of claim to the extent that it is being settled and
15 the intention of new money of the debtors to buyout their
16 employees. This is not the type of matter that creditors would
17 be expected to vote on. Obviously, as with any action and of
18 the ordinary course, there are consequences that flair from the
19 agreements that affect the debtor's business and particularly,
20 therefore, their chances to reorganize.

21 But as the second circuit has made clear and Lionel has
22 brought to me, the existence of those consequences does not
23 constitute a sup-plan. Simply, Appaloosa argued, again I
24 believe only in oral argument, that it questioned whether the
25 proposed buyout was even necessary. In that the debtors had

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1 already obtained very significant and beneficial results from
2 the UAW attrition program. The assertion, again, came as
3 somewhat of a surprise to me and I believe also the debtors.
4 And I believe it's been sufficiently rebutted by the counsel
5 involved in the negotiations in the following two respects,
6 first, with regard to the UAW employees, it appears that there
7 may be some overlap between the existing program and buyout --
8 but that the existing program in that they apply to more senior

9 workers, would logically continue to be chosen by those workers
10 and that the buyout would buy two other -- two others.

11 Secondly, Mr. Kennedy represented and based on my
12 understanding of record in 1113 and 1114 hearing his
13 representation is correct, in that they ought to believe that t
14 would be the buyout in order to have optimal attrition given
15 the age of its workforce, which is substantially younger than
16 the threshold traders for the other aspects of the program.
17 Again, Delphi has opposed the basic idea that attrition here is
18 good. I believe that is the only issue that I needed to
19 consider in connection with this objection, i.e., whether a
20 date would encourage attrition on its own as opposed to being
21 simply redundant with the other aspects of the program.

22 And finally, in the equity committee, the ad hoc committee
23 and Wilmington Trust has objected to the settlement in the
24 motion on the basis that Delphi Corporation -- the parent
25 corporation, is the (indiscernible) under the settlement up to

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1 GM who will be paying out to the extent buyout payments are
2 paid by the debtor -- the backup payments. It was contended by
3 each of those three objectors that other entities, in
4 particular the North American subsidiaries actually employ the
5 hourly workers affected by this agreement, should be
6 responsible for making the payments and having a claim asserted
7 against them by GM.

8 The agreement in the proposed order is similar to the
9 existing UAW attrition program, provide that all rights of
10 every debtor, as it does to every other debtor, are fully
11 preserved so that for example, Delphi Automotive Systems
12 behinds it's either supervised or have a claim asserted against
13 it by Delphi Corporation under way of its bigger share,

14 (indiscernible) that Delphi Corporation has to pay out, either
15 to GM or to the EUA workers. There is no determination
16 anywhere in the order as to what level of priority that claim
17 would have, in the hopes the payment out occurs post-petition
18 by Delphi Corporation.

19 As I noted in oral argument, it seems to be, that perhaps
20 with one exception, that certain preservation of rights
21 sufficiently addresses the -- that's particularly the case
22 since Delphi Corporation is not simply a volunteer of a
23 potentially innocent bystander here. In addition to being a
24 party to a corporate investment group because they may or may
25 not have independent legal significance as far as claims

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1 asserted against it. But it is also responsive of the various
2 benefit plans that come with retiree health and OPEB benefits
3 and consequently would be benefited by a reduction of such
4 OPEB.

5 But leaving that aside, it is also the parent of DAS, and
6 potentially that the objectors believe should probably be
7 resolved of the obligation.

8 As far as the record of this hearing is concerned and
9 based on my knowledge of the debtors reorganization planning,
10 including as set forth in the 1113, 1114 trial, it is clear to
11 me that the debtors presently do not intend to jettison their
12 North American operations and that they see tangible benefit
13 them in those operations. Moreover, it does not appear to me,
14 on this record, that those North American subsidiaries are so
15 hopelessly insolvent that they could not satisfy a -- all or a
16 material portion of a claim over for each of -- for their fair
17 share of my ability in respect of its payments on these
18 agreements. Or as to the extent that they could not on

19 absolute majority rule, take the corporation, when at a
20 minimum, would become an equity holder through plan for those
21 North American entities.

22 Consequently, it seems to me that these, in one way or
23 another, be able to any of the (indiscernible). And
24 consequently, I think the reservation does sufficiently protect
25 Delphi Corporation from having to pay more than its fair share

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1 under this agreement. So consequently, I'll approve the motion
2 and authorize the debtors to enter into the two agreements.

3 There's a remaining aspect totally aside, which was
4 address briefly, which is the debtor's request that the ten day
5 stay, under Bankruptcy Rule, 6004(g) not apply. There was an
6 attempt to rebut the assertion, which I accept, and I guess
7 it's implicit in my earlier remarks, that the prompt
8 implementation of this attrition program is of the greatest
9 importance to the debtor's ability to continue to resolve the
10 bigger earning ratios which, of course, are of fundamental
11 importance to this Chapter 11 case. I believe that the need
12 for the speed is sufficiently important to establish cause
13 under Rule 6004(g), notwithstanding the fact that there were
14 four objections to the motion. Again, with the limited
15 exceptions that I discussed, those are motions -- I'm sorry --
16 those objections were not based on the merits of the attrition
17 program itself. There are a lot of issues involving GM and as
18 I previously said, I believe that treatment of GM in these
19 agreements is both essential to the agreements and cannot be
20 changed without losing the agreements. And reasonable and
21 support the debtor's business reasons. So I believe that the
22 attrition programs need to be implemented promptly and that the
23 existence of a ten day stay, which would take us into,

24 basically, mid-July would simplify the implementation of
25 attrition programs as to materially impair the ongoing

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1 negotiations of the remaining collective bargaining issues. So
2 I've granted this motion as well.
3 (The Judge's Final Ruling is Attached to the Order at Docket
4 Number 4461)

5 MR. BUTLER: Thank you, Your Honor. Your Honor, we
6 submitted an order to the court for the Court's consideration
7 and I didn't hear anything and the ruling didn't direct us to
8 change aspects of that and would ask the Court to consider
9 entering it.

10 THE COURT: I think that's fair. There were some
11 clarifications on the record. But I believe that they are
12 consistent with the document and what they were. I don't think
13 you had any language, for example, on 502(b) and the like. Has
14 everyone had a chance to review that order? It wasn't I.
15 Okay. So it will be entered.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, what do
17 you want to do with the chambers conference at this point?

18 THE COURT: Well, can everyone -- would everyone like
19 about -- I can either break for about fifteen minutes or five
20 minutes or I could break for an hour.

21 MR. KENNEDY: I'd say five minutes, Your Honor.

22 THE COURT: Okay.

23 MR. BUTLER: All right. So 2:30 Your Honor, for the
24 chamber's conference?

25 THE COURT: Yes.

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1 MR. BUTLER: And -- okay. And that would involve just
2 people who are actually --

3 THE COURT: Yes, let me be clear. That conference is just
4 going to involve the parties who are actively participating in
5 the 1113, 1114 litigation. So if you are looking to press, or
6 just a general comment or equity voter or employee, I'd just
7 exclude you anyway so you ought to leave now. Otherwise, I'll
8 be back at 2:30, excuse me.

9 MR. BUTLER: Thank you, Your Honor.

10 (Proceedings Concluded at 2:16 p.m.)

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1 C E R T I F I C A T I O N

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3 I, Esther Accardi, court approved transcriber(s), certify that
 4 the foregoing is a correct transcript from the official
 5 electronic sound recording of the proceedings in the above-
 6 entitled matter.

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8 _____ June 30, 2006_____

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